

1 IN THE COURT OF COMMON PLEAS
2 TRUMBULL COUNTY, OHIO
3 TRIAL COURT CASE NO. 01-CR-793
4 SUPREME COURT CASE NO. ~~03-1441~~ 07-2288

5 STATE OF OHIO,)
6 Plaintiff)
7 vs.)
8 DONNA M. ROBERTS,)
9 Defendant)

2007 DEC 18 A 11:46

10
11 BE IT REMEMBERED that this matter came on for
12 hearing on December 6, 2006, January 17, 2007,
13 September 20, 2007, October 22, 2007, and
14 October 29, 2007, before the Honorable Judge
15 John M. Stuard of the Trumbull County Common Pleas
16 Court at the Trumbull County Court House, 160 High
17 Street, Warren, OH 44481

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21 Mary Ann Mills, R.P.R.
22 Official Court Reporter
23 Trumbull County, OH

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1 APPEARANCES

2

3 On Behalf of the State of Ohio:

4 Assistant Prosecutor Kenneth N. Bailey

5 Assistant Prosecutor Christopher D. Becker

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7 Warren, OH 44481

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10 On Behalf of the Defendant, Donna Roberts:

11 Atty. David L. Doughten

12 Atty. Robert A. Dixon

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1 WEDNESDAY, DECEMBER 6, 2006

2 (In-chambers with Judge Stuard at 9:50 a.m.)

3 THE COURT: This is set this
4 morning for hearing on the Donna Roberts case.

5 ATTY. BECKER: I think for the
6 record, it is just a status conference. We don't
7 have the Defendant here.

8 ATTY. DOUGHTEN: I should put
9 on the record that Miss Roberts specifically
10 requested that she not be brought back, so I would
11 waive her presence if it is necessary for a
12 status. She had specifically written me and
13 requested that she not be brought back.

14 ATTY. BECKER: I guess we are
15 actually here on a couple of things. There's
16 actually been three motions filed by Mr. Doughten.
17 One for the appointment of co-counsel, that would
18 be Robert A. Dixon. We don't have an objection to
19 that. Pursuant to the rules, we probably do need
20 an appointment.

21 THE COURT: I'll grant that.
22 Prepare an entry.

23 ATTY. BECKER: There is a

1 motion for appropriation of funds for expert
2 assistance. We are going to oppose that and a
3 motion for release of records. I think optimally
4 what we would like to do is Mr. Doughten has
5 indicated that her time to file an appeal to the
6 U.S. Supreme Court is not yet tolled at this
7 point. There is also an unrelated matter
8 involving both myself, Mr. Bailey and the Court
9 that is pending in the disciplinary counsel, which
10 I think would perhaps be best if we waited until
11 resolution occurred in that matter, and I think
12 basically, what we would like to do is just come
13 back in January at some point for another status
14 conference to see where these various issues are
15 at. I suppose we don't have an objection to the
16 release of records.

17 ATTY. BAILEY: No.

18 ATTY. DOUGHTEN: I think there
19 is a journal entry. Just so the record is clear,
20 there may be an issue as to competency, I told the
21 Court off the record, I was told about a year or
22 so ago, that there had been a problem with her
23 mental health. I believe she's on the right

1 medication and in my view doing fine right now. I
2 believe she's competent, but there is that in the
3 past that I want to look into. I have had done a
4 signed paper release, and there were some
5 incidents that her son had just told me a month
6 ago that I was unaware of and Chris was unaware of
7 that there had been some serious auto accident
8 with head injuries, I don't know if that is true
9 or not. I said we are trying to find out if that
10 is the case or if that has any connection
11 whatsoever to the problem she had. I'm trying to
12 get those records, so I can let the Court know
13 with some assurance, whether there is or isn't an
14 issue.

15 ATTY. BECKER: I suppose we
16 don't have an objection as long as we are provided
17 the records as well.

18 ATTY. DOUGHTEN: I have no
19 problem with that.

20 ATTY. BECKER: I think there is
21 an attached order to that motion. I think we'll
22 let the motion for appropriation of expert funds
23 be held in abeyance. We'll come back on

1 January 17, 2007 at 3:00 p.m. for another status
2 hearing.

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4 (END OF HEARING ON DECEMBER 6, 2006)

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1 WEDNESDAY, JANUARY 17, 2007

2 (In-chambers)

3 THE COURT: There was a hearing
4 set it was on this motion for release of records
5 and motion for appropriation of funds for an
6 expert of a psychological nature, psychiatric
7 nature. The Court has had conference with all
8 parties and I have no problem with approving these
9 matters, but I do question at this point my
10 jurisdiction to grant the motion as stated for the
11 reason that this case has been sent back from the
12 Supreme Court with one narrow issue involved and
13 that is for me to do another independent review of
14 the mitigating aggravating factors and to type my
15 findings to resubmit into the case. There is no
16 instruction from the Supreme Court as to anything
17 other than that that I read.

18 ATTY. BECKER: Except for the
19 allocution.

20 THE COURT: Well the
21 allocution, you guys never had a bad day like I
22 had a bad day that day. How often do you miss the
23 allocution, although there is a lot of law that

1 says you have to do it. In any event, in the
2 interest of justice, it seems to me with the facts
3 as they stand presently, all parties from what I
4 observe, including the Court, are really on unsure
5 ground here as to what is the proper thing, but
6 there has been a request by recently appointed
7 counsel representing Miss Roberts, that they wish
8 to obtain her medical and particularly psychiatric
9 or psychological records to see if there is
10 something that they would be called upon to do
11 with that information and I have no reason at all
12 not to wish them well in obtaining that
13 information. It is been suggested that the
14 easiest way is for her signature, which they have
15 brought up to me and that is fine. If she does
16 not cooperate, then this Court has no objection to
17 aiding in any way that it is determined to be
18 proper, with the thought of my jurisdiction in
19 mind, to help you get that information. I also
20 have an order directing evaluation of Defendant's
21 competency to stand trial.

22 ATTY. BECKER: Not to stand
23 trial. Competency to be resentenced.

1 THE COURT: Yes. We have
2 already had the trial. That was done at the
3 inception. We also had another evaluation.

4 ATTY. BECKER: Evaluation
5 regarding the waiver of mitigation.

6 THE COURT: And those all
7 showed that she was competent of course and that
8 psychologically she had no defect or any reason
9 why that the matter could not proceed.

10 ATTY. BECKER: Note for the
11 record that that is a proposed entry that was
12 prepared by the State. Mr. Doughten has an
13 opportunity to review that and I believe approves
14 of the same, we are trying to avoid the problem
15 that got us here in the first place.

16 THE COURT: You do not object
17 to them having prepared this entry?

18 ATTY. DOUGHTEN: That is
19 correct. I was provided it before it was
20 presented to the Court.

21 THE COURT: I am signing this
22 with the reservation that I'm not totally sure of
23 my jurisdiction to do so, but I see no reason why

1 anyone would object to my jurisdiction.

2 ATTY. BECKER: We have to
3 determine that she's competent before we can
4 sentence her. I don't think there is any question
5 on that. They are going to argue for additional
6 evidence to be presented at the sentencing
7 hearing, including mitigation type evidence. Our
8 position, I think, I know is going to be that that
9 is not what we were here for when we ultimately
10 get to that point. That is for a different day.

11 THE COURT: I don't disagree,
12 but I could question on the basis of what the
13 manner in which the previous Roberts case was sent
14 back to this Court, that I can legitimately say
15 there are no more competency evaluations that are
16 going to be done. I'm going to do what the
17 Supreme Court ordered me to do.

18 ATTY. BECKER: For the record,
19 we are going to come back February 14, 2007 at
20 3:30 p.m. for another status hearing.

21

22 (END OF HEARING ON JANUARY 17, 2007)

23

1 THURSDAY, SEPTEMBER 20, 2007

2 IN OPEN COURT AT 3:00 p.m.

3 THE COURT: This matter was set
4 today. I understand there is a problem with going
5 forward.

6 ATTY. BECKER: I'll address the
7 Court. We were here today to determine the
8 competency of Miss Roberts to stand trial -- I'm
9 sorry to stand for sentencing as remanded by the
10 Ohio Supreme Court. It is our understanding that
11 the report from the Forensic Diagnostic Center has
12 been prepared, and the Court as well as counsel,
13 have received copies of that. It is our
14 understanding, and just briefly discussing this
15 issue, that Mrs. Roberts and her attorneys will
16 not be stipulating to that report. That has
17 necessitated the requirement that we bring
18 Dr. Gazley from the Forensic Diagnostic Center
19 here before the Court and put him on the stand.
20 We have checked with every one's schedule. I
21 believe we mutually agreed that October 22nd at
22 1:00 p.m. would be a mutually convenient time to
23 do that. So we'll return on the 22nd to, I

1 believe, to determine whether or not she's
2 competent. I know there are some outstanding
3 issues and motions by the defense. I believe they
4 will make arguments at that point. We as well
5 will make arguments, and the Court will make a
6 ruling from that point, and depending on how the
7 Court rules, we'll come back on October 29th or
8 later at 1:00 p.m.

9 I think Mr. Doughten may want to add
10 something to the record, but I tried to summarize
11 that.

12 THE COURT: There are also
13 three or four motions pending. I have had
14 discussion with both sides and I guess it would be
15 appropriate for me to probably make rulings on
16 those and send copies to all of you before that
17 next hearing. I think the latest one was filed
18 today. I'll do that, and see you back here on the
19 22nd of October, and we'll proceed from that point
20 on.

21
22 (END OF HEARING ON SEPTEMBER 20, 2007)
23

1 MONDAY, OCTOBER 22, 2007

2 HEARING ON MOTIONS

3 IN OPEN COURT AT 1:25 p.m.

4 THE COURT: Good afternoon.

5 This matter is before the Court on remand from the
6 Supreme Court in State vs. Roberts. 2006, 110
7 Ohio State 3d, 71.

8 ATTY. BECKER: Our case number
9 is 01-CR-793.

10 THE COURT: The Court found no
11 prejudicial error in regard to Defendant Roberts
12 conviction, and the conviction and judgment of the
13 Court was affirmed.

14 The Court then remanded the case for the
15 second phase on the basis that they felt there was
16 input from the Prosecutor's office. The Court
17 has -- well, that is not important at this point.

18 The purpose of today is to handle the
19 remand and the narrow focus in which the Supreme
20 Court sent the matter back here. We have some
21 motions, which must be put on the record in the
22 meantime. I have had conversations with both
23 sides in regard to these motions over the last

1 couple of weeks, but we have not formally
2 journalized them.

3 I have first a motion for Appropriation
4 of Funds for Expert Assistance. That has been
5 briefed by the defense. I don't know that the
6 State has presented anything other than the
7 discussion that we had. What is the State's
8 position?

9 ATTY. BECKER: We would oppose
10 that motion at this point. We believe in the
11 dictates of the opinion, the Forensic Center
12 has -- and we have testimony here today and a
13 report of Dr. Gazley detailing the Defendant's
14 competency for these proceedings. The opinion of
15 Dr. Gazley is that she is competent. I understand
16 the Court has to accept that and we'll present
17 some testimony on that, but we'll oppose the
18 second violation.

19 THE COURT: Do you have
20 anything else to add?

21 ATTY. DOUGHTEN: Nothing.

22 THE COURT: I have advised
23 counsel for both sides, the Court is taking a

1 narrow approach here as to what is appropriate.
2 The primary thing that, and the only thing that I
3 felt was relevant, was the present competency of
4 the Defendant, Miss Roberts. I had appointed a
5 forensic expert in that regard. I have that
6 report back, which I have accepted. It finds that
7 she's presently competent.

8 ATTY. BECKER: Your Honor, I
9 don't think they are stipulating to that report.
10 I know you have the report, but I think we need to
11 put some testimony on from Dr. Gazley. That's why
12 we have subpoenaed him here. They are not going
13 to stipulate to the report.

14 ATTY. DOUGHTEN: No, we are
15 not.

16 ATTY. BECKER: We are going to
17 ask, or we are going to call Dr. Gazley to the
18 witness stand, he's here. Dr. Thomas Gazley
19 prepared the report.

20
21 DR. THOMAS GAZLEY
22 being first duly sworn, according to law,
23 testified as follows:

1 DIRECT EXAMINATION BY ATTY. BECKER:

2 Q Would you state your name for the record?

3 A Thomas Gazley.

4 Q Dr. Gazley, where are you employed?

5 A Forensic Psychiatric Center of Northeast
6 Ohio.

7 Q What is your occupation there?

8 A Psychologist.

9 ATTY. BECKER: It is my
10 understanding that the defense will stipulate to
11 his credentials.

12 THE COURT: I misunderstood. I
13 apologize for that.

14 ATTY. DOUGHTEN: That's
15 correct, Your Honor.

16 Q You have a Ph.D., you're a psychologist
17 and you work for the Forensic Diagnostic Center,
18 is that correct?

19 A That is correct.

20 Q Do you make routine, as part of your
21 work, evaluations to determine competency of
22 criminal Defendants?

23 A That is true.

1 Q You also make a part of your work,
2 determining not guilty by reason of insanity pleas
3 and making opinions with respect to those pleas,
4 is that correct?

5 A That is correct.

6 Q How long have you been employed with the
7 Forensic Center?

8 A One year.

9 Q I want to direct your attention and
10 specifically to a report that was prepared
11 involving a woman by the name of Donna Roberts.
12 Are you familiar with that report?

13 A Yes, I am.

14 Q I have it to be ten pages in length, and
15 we have marked a copy of it as State's Exhibit
16 No. 1 and I have put today's date of October 22,
17 2007, on it. Do you have a copy of that report in
18 front of you?

19 A Yes, I do.

20 Q You probably have the original?

21 A Correct.

22 ATTY. BECKER: I believe
23 counsel for the defense has a copy of this ten

1 page document.

2 ATTY. DOUGHTEN: We do.

3 Q I am going to provide that to Dr. Gazley
4 and ask if that is a fair and accurate copy of the
5 original which you have prepared.

6 A It seems to be, yes.

7 Q Does your signature appear on the last
8 page?

9 A Yes, it does.

10 Q The original would be either in your
11 files at the Forensic Diagnostic Center or in your
12 files that you brought here today?

13 A Correct.

14 Q Which is it?

15 A It is at the Diagnostic Center. This is
16 a copy.

17 Q Dr. Gazley, you were asked to evaluate
18 Miss Roberts to determine whether she was
19 competent to be sentenced in these matters and to
20 proceed, is that correct?

21 A I believe the actual wording in the Court
22 order was competence to be resentenced.

23 Q And in efforts to find out whether she

1 was, what steps did you undertake to make that
2 determination?

3 A I interviewed Miss Roberts at Marysville.
4 I was able to review her mental health records in
5 the mental health department at Marysville, and I
6 reviewed the available information in the court
7 file regarding some of the background information
8 in the case.

9 Q And how long did you actually interview
10 Mrs. Roberts?

11 A It was close to two and a half hours, one
12 way or the other.

13 Q And you physically went to Marysville
14 Correctional Institution and did that?

15 A Yes, I did.

16 Q How much time did you spend going over
17 the records that you received and inspected?

18 A There were the records from the police
19 reports. There were records available in the
20 mental health file at Marysville. So I would say
21 in the neighborhood of an hour, hour and a half.

22 Q And you reviewed those and reviewed your
23 interview with her and you said there were some

1 other documents you had?

2 A There were, there was the order for the
3 evaluation. There was some police reports. I had
4 a conversation, in person conversation with the
5 director of the psychology department at
6 Marysville. I also had, I believe, a phone
7 conversation with defense counsel.

8 Q Mr. Doughten or Mr. Dixon?

9 A Correct.

10 Q Or both of them?

11 A To the best of my recollection, it was a
12 speaker phone call. I'm not certain exactly.

13 Q After you gathered all of that
14 information and reviewed it, I assume you took
15 notes at the interview with Miss Roberts.

16 A That is correct.

17 Q Did you then come to an opinion as to
18 whether or not she was competent to be
19 resentenced?

20 A I phrased the opinion, not so much in
21 terms of competency, given that that's a question
22 for the Court to decide, but I do have an opinion
23 in terms of her ability to understand the

1 sentencing process and the ability to understand
2 what the alternatives available are to her as well
3 as her ability to provide her counsel with any
4 mitigating circumstances, should she desire to do
5 so.

6 Q And what was your determination?

7 A That she would be able to do those things
8 I just listed.

9 Q And you have put that opinion in your
10 report, is that correct?

11 A Yes, I did.

12 Q And the person that you met with in
13 Marysville, she's the Defendant in this case, Miss
14 Donna Roberts?

15 A That is correct.

16 Q So it's your opinion with a reasonable
17 degree of psychological certainty that Miss
18 Roberts is aware of what she could do, not whether
19 she's going to do it, but what she could do to
20 present to this Court to spare her from being
21 given the death penalty?

22 A That is correct.

23 Q She's aware that she can give evidence to

1 the Court and to her attorneys to mitigate the
2 sentence?

3 A Yes, and she has the ability to do that.

4 Q And it is your opinion, based upon your
5 evaluation of her, that these proceedings could
6 continue with her being sentenced and being able
7 to present I guess allocution or make a statement
8 to the Court?

9 A Yes.

10 Q The item you have in front of you,
11 State's Exhibit No. 1 with a date of today,
12 10/22/07, that is a fair and accurate copy of the
13 original?

14 A It appears to be, yes.

15 ATTY. BECKER I have no further
16 questions for Dr. Gazley, but I would move that
17 his report, the ten page report be made a part of
18 the record and I know Mr. Doughten may want to
19 wait.

20 THE COURT: You can proffer it
21 at this time.

22

23

1 CROSS EXAMINATION BY ATTY. DOUGHTEN:

2 Q I want to ask you this afternoon a little
3 bit about references that you made in your report
4 and were in the prison records as to the auto
5 accident, the head injuries, the sex abuse, those
6 sort of things. I'll go through them one by one.
7 Did you become aware that Miss Roberts had been
8 involved in a number of auto accidents?

9 A Yes.

10 Q In a serious one in the year 2000?

11 A The degree to which it was serious, I
12 don't know. It did result in some injury I am
13 aware of.

14 Q That is what I wanted to ask you about.
15 Is it important to know the effect that a head
16 injury might have on one's ability to be
17 competent?

18 A I think the, certainly in a typical
19 competency proceeding, it is my understanding that
20 the criteria that the Court uses to make a
21 determination about competency are pretty spelled
22 out in terms of what the Court has to weigh.
23 Under these circumstances, I don't know if there

1 is such a thing as a competency to be resentenced
2 criteria. It is difficult for me to say, yes, a
3 head injury in 2000 would in fact influence
4 competency to be resentenced in the year 2007
5 without knowing specifically what the injury might
6 have been.

7 Q That is my question. What is a
8 neuropsychologist?

9 A A neuropsychologist is a psychologist who
10 is specialized in evaluating, assessing and
11 sometimes treating disorders of the brain that
12 have to do with often times neurological
13 impairment, whether the result of disease, whether
14 the result of some sort of injury or illness of
15 the brain.

16 Q And do you sometimes refer cases out to a
17 neuropsychologist?

18 A I personally have not as of this date,
19 but I am aware of neuropsychologists. I have
20 colleagues who are neuropsychologists. I know
21 what they do, where they are employed, what type
22 work they do.

23 Q With your educational background, explain

1 -- what is organic brain damage?

2 A Organic brain damage?

3 Q Is there such a thing?

4 A Well there used to be.

5 Q If you could explain that for us.

6 A Organic simply means it refers to
7 something that has to do with damage to that
8 particular organ of the brain. Years ago in some
9 of the old nomenclature, organic brain damage was
10 in fact a diagnosis. It is no longer a diagnosis.

11 Q What is the proper diagnosis if you would
12 determine, and this is hypothetical, if you would
13 determine that perhaps a brain injury caused
14 significant change in a person's ability to
15 process thought?

16 A I think it is a diagnostic question. If
17 the question is specifically that it changes a
18 person's ability to process thought, that is a
19 different diagnostic question, than if it changes
20 a person's personality and their ability to
21 function.

22 Q Explain the differences.

23 A Processing thought is a cognitive,

1 intellectual, it is a processing type of thing.
2 It has to deal with the use of language. It has
3 to deal with the use of memory. It has to deal
4 with the ability to take in information, do
5 something with it, feed it back, if that is the
6 task. The personality part of it, is the person's
7 ways of relating to others, relating to
8 situations, acting in a characteristic manner,
9 personality meaning it has some sort of stability
10 across different situations.

11 Q Might a sudden mood change or personality
12 change, might that effect one's ability to
13 interact with defense counsel say?

14 A It could.

15 Q Did you find that to be so in this case?

16 A I had no direct observation of her
17 ability to interact with defense counsel, but
18 based on her ability to interact with me and
19 provide me information, provide a coherent account
20 of her own perceptions about the situation, I came
21 to the conclusion that she would be able to do so
22 with her defense counsel as well.

23 Q Did you talk to any of her family

1 members, son, sisters, in regard to her situation
2 before and after the auto accident?

3 A No, did I not.

4 Q In reviewing the Marysville records, did
5 you come across some allegations of sexual abuse
6 that she had suffered as a child?

7 A I don't remember if it was actually in
8 the record at Marysville or something that Miss
9 Roberts told me directly.

10 Q Let me ask you this, did you see
11 anything, I saw, I see the post-traumatic stress
12 syndrome is not a diagnosis of yours today, is
13 that correct?

14 A That is correct.

15 Q Did you see anything in the mental health
16 records at Marysville referring to post-traumatic
17 stress syndrome?

18 A Not that I recall.

19 Q Is that sometimes an effect of childhood
20 sex abuse?

21 A Yes.

22 Q Were you aware, from discussing with the
23 mental health experts at Marysville, whether Miss

1 Roberts had gone through periods of
2 hallucinations?

3 A I don't recall them saying she had gone
4 through periods of hallucinations specifically.
5 She was going through periods of significant
6 depression while at Marysville.

7 Q You don't remember any specific incidents
8 of imagining things in herself, that wasn't made
9 available to you?

10 A Not that I recall right offhand.

11 Q Do you remember what drugs she was taking
12 at Marysville?

13 A Yes, I do.

14 Q Do you remember if they were giving her
15 any psychotropic drugs at Marysville?

16 A Yes, she was getting psychotropic
17 medication.

18 Q What is a psychotropic drug, and then
19 what is it usually prescribed for?

20 A Qualifying my answer with that I'm not a
21 medical doctor. I'm talking about this based on
22 my experience in behavioral medicine, not being a
23 physician, but being a psychologist and being

1 familiar with types of medications, not being able
2 to prescribe.

3 Q You know a whole lot more than we do I'm
4 sure. Anything you can help us with.

5 A She was prescribed medication called
6 Trazodone, a medication called Lithium and a
7 medication called Wellbutrin. The Lithium is a
8 mood stabilizing medication often used to treat
9 the symptoms of bipolar disorder. The Wellbutrin
10 is a anti-depressant medication often used to
11 treat the symptoms of depression and the Trazodone
12 is a medication that is often used to treat
13 depression or often used as a sleeping aid as
14 well. And I believe those are the three
15 medications she had been prescribed.

16 Q This may be out of the your field, if it
17 is an unfair question, let me know. Aren't
18 psychotropic drugs often used for people suffering
19 from hallucinations? Isn't that one of the
20 reasons they are sometimes prescribed?

21 A Hallucinations are a symptom of a
22 psychiatric disorder, known as schizophrenia.
23 Sometimes a bipolar disorder with psychotic

1 features, a person may experience symptoms of
2 hallucinations as well. Psychotropic medication
3 is a general name for any kind of medication that
4 is used to treat psychiatric illness.

5 Q What I was going to ask you, you have
6 diagnosed her with bipolar disorder, but not with
7 schizophrenic features, is that correct?

8 A That is correct.

9 Q Did you see in the Marysville records or
10 speak to a health official in Marysville about any
11 type of schizophrenia being present in Miss
12 Roberts?

13 A No.

14 Q You didn't see that?

15 A Not that I recall.

16 Q You mentioned in your report, and that
17 Miss Roberts had a pretty consistent suicide
18 ideation, is that the right term?

19 A Yes.

20 Q And what did you base that on?

21 A Her report. She told me she had thought
22 about suicide in the past.

23 Q Did you speak to any mental health

1 officials at Marysville or in reviewing the mental
2 health records, did you see any specific instances
3 of suicide attempts or suicidal thoughts while she
4 was in Marysville?

5 A I believe early on in her stay there, she
6 was diagnosed with a level of depression that was
7 significantly more severe than the depression that
8 she experienced at the time that I saw her.

9 Q And if you can early on, if you can time
10 frame, are you talking, well if you can, can you
11 give us a year approximately?

12 A I believe in reviewing the mental health
13 record at Marysville, in July of 2003, they had
14 indicated that she was experiencing moderate to
15 severe depressive mood.

16 Q Is that consistent with your bipolar
17 diagnosis? If it is, can you explain to us how
18 that works?

19 A Are you asking me, is depressed mood
20 consistent with the bipolar diagnosis?

21 Q It is a convoluted question. Let me back
22 up and straighten it out for you. Did you come to
23 an opinion, an opinion as to what was the basis

1 for her conscience thinking of suicide?

2 A My assumption was, it was due to symptoms
3 of depression. Depression causing the suicide
4 thoughts.

5 Q Do you know from your reviewing of her
6 mental health records, did this pre-exist the
7 charges here?

8 A That I don't know. The mental health
9 records that I reviewed were mental health records
10 from Marysville institution.

11 Q You are unaware if this was chronic, and
12 what I mean by that, say for 20 years preceding
13 the homicides or if this was just post, when she
14 got to Marysville?

15 A I know there was a previous psychiatric
16 history, I do not know what the diagnosis was.
17 There was no record available to me in terms of
18 what her previous psychiatric illness might have
19 been or how it was treated or what it was treated
20 with.

21 Q Speaking of records, for the Court's --
22 in all fairness to the doctor, we just received
23 this last Friday, which was the 19th. I think I

1 showed it to you for five minutes.

2 A You did.

3 Q Identifying Defense Exhibit A, these are
4 the Social Security records SSI, and the reason I
5 wanted to ask you, were you aware at the time you
6 did the diagnosis, if Miss Roberts was receiving
7 any type of benefits for mental disorder, mental
8 handicap from Social Security administration?

9 A I was not aware of that.

10 Q You just saw this for the first time
11 today, is that correct?

12 A I saw about two pages of that, yes.

13 Q If you were aware, if you became aware
14 that someone had been diagnosing, was receiving
15 benefits from the Government for a mental
16 disability, could that have any affect on your
17 opinion, do you think?

18 A I don't think it would have an affect on
19 my opinion that addressed the legal question
20 before the Court at this time.

21 Q And could you explain why that is?

22 A There are often situations where people
23 are been diagnosed with psychiatric illnesses

1 either of acute or of a chronic nature. And they
2 have been accused of an offense, and that they,
3 the Court remains concerned either about their
4 competency to participate in proceedings or about
5 their sanity at the time of the offense. The
6 diagnosis, simply because a person has a
7 psychiatric or mental health diagnosis does not
8 influence one way or the other whether a person is
9 ultimately found to be competent to stand trial.
10 The diagnosis is part of how, what you would have
11 to investigate to make that determination, but it
12 doesn't impact, simply because a person has a
13 diagnosis doesn't necessarily mean they are
14 automatically competent or not competent. A
15 person who is psychotic, a person who has paranoid
16 schizophrenia, a person who has a bipolar
17 disorder, a person who has a major depressive
18 disorder, can be and often is found competent to
19 stand trial.

20 Q I just have one more area. I just want
21 to clean up one thing. I want to get back to the
22 head injury aspect of your diagnosis. Is this
23 something that a person, a psychologist who is not

1 a neuropsychologist, can you make a determination
2 of how severe the injury is?

3 A No.

4 Q So that is something that in order to
5 understand the affect that the injury may have
6 had, you would have to have a neuropsychologist
7 give an evaluation, which in turn you would have
8 to review in incorporating your opinion, is that
9 correct?

10 A The way you phrase the question, I don't
11 believe it is correct.

12 Q Go ahead and phrase it properly.

13 A I think, I base my opinion that I provide
14 the Court on the information that I receive from
15 the subject at the time I do the interview.
16 Whether or not that person has a severe or
17 disabling mental illness or whether or not that
18 person may have a neurological impairment, or a
19 brain injury, I think is maybe related, but is not
20 the crux of how I make the decision about my
21 opinion. I make my decision about the opinion
22 based on the responses the person provides me to
23 the questions I asked that I believe are related

1 to the questions the Court needs to address,
2 rather than the diagnosis. The diagnosis may
3 provide some helpful information in terms of what
4 might be expected, but in terms of the person's
5 ability to actually provide a coherent, relevant
6 reasonable, intelligent response to what the Court
7 needs to know, it is not necessary.

8 ATTY. DOUGHTEN: Thank you very
9 much.

10 THE COURT: Any other
11 questions?

12 ATTY. BAILEY: Just for
13 purposes of the record, I'm replacing Mr. Becker
14 because he got called down to trial in Judge
15 McKay's Court.

16

17 REDIRECT EXAMINATION BY ATTY. BAILEY:

18 Q Dr. Gazley, with the additional
19 information that defense counsel just presented to
20 you, and the questions that he asked, did that
21 change your opinion in any way as to the
22 Defendant's ability to be competent to be
23 resentenced?

1 A No, it did not.

2 ATTY. BAILEY: Thank you.

3 THE COURT: I have a couple of
4 questions. If I understand what you are saying,
5 and I think the main thrust of counsel's question
6 was, if a person has had some psychiatric problem,
7 whatever it maybe, bipolar, schizophrenia,
8 whatever, unless the person is to the point where
9 they don't understand what is going on at the
10 time, you are looking at a slot of time to
11 determine, is this person competent to understand
12 what is going on now, is that correct?

13 WITNESS: That is correct.

14 THE COURT: That is the purpose
15 of the competency hearing?

16 WITNESS: Correct.

17 THE COURT: You may have
18 somebody that hears voices or whatever, but they
19 still have the ability to understand and
20 communicate and understand what their attorney is
21 saying, whatever, that may qualify as being
22 competent, even though they may be pretty much not
23 normal, is my understanding correct?

1 WITNESS: Yes.

2 THE COURT: Is it possible for
3 somebody to have these other problems and still be
4 determined competent at any certain time?

5 WITNESS: Are you asking is it
6 possible for a person to have a psychiatric
7 diagnosis such as --

8 THE COURT: The thing that
9 concerns me here is, they brought up this fact
10 that she has been, while in prison, been given
11 Lithium, which I think most of us realize is for
12 bipolar disorder, and other drugs that may be for
13 some other reason. My question is, are you
14 comfortable with your determination of competency,
15 taking that all into account, as to whether or not
16 she's competent at the present time to understand
17 the proceedings against her?

18 WITNESS: I think, especially
19 in reviewing the information available to me at
20 Marysville, there is a definite improvement in her
21 overall psychiatric and psychological well-being
22 from the time she was admitted, up until the time
23 I saw her, and you can see in the rating scales

1 that they used, the way they described the
2 improvement and the progression of her illness, to
3 the point where, back in 2003, I believe I
4 mentioned to defense counsel, that she was
5 moderately to severely depressed, and then the
6 descriptors lessened as time went on and she was
7 treated both psychiatrically and psychologically
8 there, to the point where the final diagnostic
9 considerations by the mental health people at
10 Marysville were that her symptoms were in fact in
11 remission at the time that I saw her. She was
12 progressively getting better, and when I saw her
13 earlier this year, she was very coherent, her
14 comments and responses to my questions were very
15 relevant and I thought to the point.

16 THE COURT: The State have any
17 further questions of the witness?

18 ATTY. BAILEY: No, Your Honor.

19 THE COURT: Defense?

20 ATTY. DOUGHTEN: No, Your
21 Honor. Thank you.

22 THE COURT: You may step down.
23 Thank you.

1 ATTY. BAILEY: Just ask for the
2 introduction of State's Exhibit No. 1.

3 THE COURT: Any objection to
4 that?

5 ATTY. DOUGHTEN: No.

6 THE COURT: No objection, it
7 will be admitted.

8 ATTY. DOUGHTEN: We move just
9 for the admission of Defendant's Exhibit A.

10 ATTY. BAILEY: No objection.

11 THE COURT: That gets to
12 another motion. Let me take care of that right
13 now. I believe there are two motions to proffer
14 evidence. One rather extensive, the other not so.
15 One is the prison records and another proffer.
16 That will be admitted for purposes of the record
17 only at this point.

18 There is a motion for the trial judge to
19 recuse himself. I am overruling that motion
20 because I have an order from the upper court to
21 review this and to send it back up again. I think
22 if the motion to recuse were proper, they would
23 have taken that into consideration. They did not

1 feel that it was necessary.

2 There is a motion for appointment of
3 independent expert and for continuance. The Court
4 has denied that request. That was where you
5 wanted to get into the mental health of your
6 client in regard to this possible accident and
7 what effect if any it had. The Court's reason for
8 overruling that is that, that is for another court
9 and another day. That is the reason I am allowing
10 you to supplement the record with that.

11 The question before this Court is only
12 the competency presently of the Defendant to
13 understand this resentencing.

14 I think I had granted a motion for
15 continuance for this resentencing hearing on at
16 least one occasion, maybe two. I believe that
17 covers all of the outstanding motions, is that not
18 correct?

19 ATTY. DOUGHTEN: It is. We
20 were going to file today, I think it's moot now, a
21 third proffer, which would be the records, but
22 since it came in as an Exhibit at this hearing, I
23 think it is moot. We may file it, just frankly to

1 make sure the record is clear, but it is already
2 part of this, so I don't think it matters.

3 THE COURT: Anything that is at
4 all relevant, you may submit as a proffer for the
5 record. Defendant's Exhibit A is admitted.

6 Now in regard to the submission by the
7 State of the competency report, which the doctor
8 has just testified, I read that over, and I am
9 accepting his testimony. That's the reason I
10 asked the questions because of what you raised on
11 this thing. And again, you are attempting to get
12 way beyond the purview of what this is about.
13 What it is about is her present competency. She
14 may have all kinds of mental problems. As long as
15 they do not affect her ability to understand what
16 is going on for purposes of the sentencing within
17 that narrow view of what the Court has ordered me
18 to do. I see no reason, in fact I see very
19 potential problems with attempting to get into a
20 whole side issue, which in my opinion, should have
21 been brought up during the trial itself, and I
22 think there was some good reasons why those items
23 were not brought up. That is for some reviewing

1 Court. It is not for this Court to determine or
2 to get into that.

3 Are there any other motions before the
4 Court before we proceed with allocution?

5 ATTY. DOUGHTEN: Have you ruled
6 on the competency issue?

7 THE COURT: I am accepting the
8 competency report and finding that the Defendant
9 is competent.

10 ATTY. DOUGHTEN: We had
11 a motion for the appointment of a
12 neuropsychiatrist. I understand the Court said
13 "no." For the record, we are going to renew our
14 motion and ask for a continuance if that
15 neuropsychiatrist were granted for obvious
16 reasons. We want to make that clear.

17 THE COURT: I think that is not
18 relevant to the reason for this hearing. That is
19 something that -- I don't know how defense counsel
20 can use such testimony, but it has nothing to do
21 here. The only thing I am concerned with or
22 should be concerned with is the present
23 competency. These other arguments are something

1 on appeal for whether she had a proper trial to
2 begin with because there were problems that
3 weren't gone into. Her attorneys quite clearly
4 tried to get her to allow them to pursue such
5 things and my understanding at the time was that
6 she gave orders not to get into anything of that
7 nature. So those are Appellate questions, they
8 are not before this Court, nor relevant to the
9 issue at hand in my mind.

10 Please submit anything of that nature
11 that you wish to put into the record. That will
12 go up with the case.

13 (SIDE BAR DISCUSSION. OFF THE RECORD AND OUT OF
14 HEARING.)

15 THE COURT: Would you please
16 bring your client forward? Good afternoon. This
17 is an opportunity for you to address the Court.
18 I'm sure your attorneys have told you.

19 A jury has returned a finding of guilty,
20 and they have recommended to this Court the death
21 penalty. You may address the Court as to anything
22 that you feel is relevant to your situation.

23 DEFENDANT: First of all, I

1 think there's been a big misrepresentation about
2 me, my character, my personality, and my life, and
3 I just want you to know me a little better.

4 I was born in 1944 on the east side of
5 Youngstown Ohio.

6 ATTY. DOUGHTEN: Speak like you
7 are angry. The Judge needs to hear you.

8 DEFENDANT: And when I was
9 about five years old, my Dad moved us out to the
10 country because he thought it would be a lot
11 healthier for us and I lived on a farm in
12 Austintown when there was no Austintown. We were
13 Roman Catholic and my Dad helped build the first
14 church there, Immaculate Heart of Mary, and I
15 attended school there for many years. When I was
16 real young, I was sexually abused, I was raped by
17 an older cousin and he hurt me and he ruined a lot
18 of me inside. And to get away from that pain and
19 everything, and I was able to, I looked sideways
20 and I'd picture a little girl in a green and white
21 ruffled little dress with a little straw hat and
22 straw basket with flowers in it and that is how I
23 got through that.

1 And a lot of times after that, I did the
2 same thing. I just went somewhere else to endure.
3 I lived in a very very abusive household. That is
4 why we had my father leave. He beat my mother.
5 He verbally abused her every which way you can.
6 It was horrible, and I spent a lot of time under
7 my bed, especially when guns came out.

8 Somehow one of my aunts, not the aunt who
9 was the mother of this person, told my Mom
10 something was happening because she noticed how I
11 was and wasn't acting, and my Mom took me to an
12 older male doctor and he took me in a room, all
13 alone and my Mom didn't come with me, and when we
14 came out, he said to my Mom, she's a bad girl.
15 And that is what I thought my whole life really.

16 I tried to be happy and positive and
17 everybody around me just loved to be with me, but
18 then when I was alone, my face was long and I was
19 very sad and I always felt empty because nobody
20 had ever paid attention to me or hugged me or
21 anything, just wasn't time. There were five of us
22 kids.

23 I'm sorry to be hesitating and taking up

1 your time. My Dad made us know that we had to get
2 good grades and throughout my entire schooling, I
3 always got certificates that I was on the honor
4 roll, and I went to Youngstown University, it
5 wasn't state then, I was on the dean's list.

6 I married my high school sweetheart, I
7 guess you could say, and after one year, we moved
8 to Miami, Florida, and I had a lot of trouble
9 getting pregnant because of what had happened to
10 me, but I finally did, and in 1969 I had the most
11 wonderful son any mother could want, mannerly,
12 respectful of everyone, intelligent and in 1987,
13 when he graduated from high school, he told me he
14 wasn't going to go to college, he wanted to go in
15 the Army and I had a breakdown. And I was like 87
16 pounds shortly thereafter, and he went out of the
17 country to Germany, and he was in JAG for ten
18 years. After that, he went to New Hampshire to
19 work for the attorney general.

20 And here his mother is in prison. I know
21 I am forgetting a lot of things, but David wants
22 me to tell you about my injuries.

23 In 1963 I was going to college and I was

1 working in South and North Side hospitals in the
2 lab getting training. And I used to always work
3 like day and night call for the technologist and
4 once I worked day night day and when I was going
5 home, I fell asleep and the car went through big
6 giant trees, hitting something, I don't know what
7 at the end, but I was there on the passenger side
8 on the front floor, filled with glass and I could
9 feel my head going up. It felt like it was going
10 up that much, and I don't remember the ambulance
11 or anything, but I know I went to the hospital,
12 and I know they spent a long time picking glass
13 out of me, and I was like spacey for awhile.

14 And then in 1983, Robert was driving the
15 car and somebody was speeding right through the
16 red light and he caught her in the corner of his
17 eye, turned just enough to get hit like right here
18 and I flew through the windshield and then again,
19 went my head and this time my legs and hands were
20 numb and I was real afraid. I was in the hospital
21 and they put me in traction and then after that
22 for a long time, many many many months, I had to
23 go to the neurosurgeon that was taking care of me,

1 and he put these big needles in my neck for some
2 kind of shots.

3 The next one was 1999, April, and that
4 was the one. Again I fell asleep. I worked too
5 hard and I worked too long at home and at the
6 businesses, and I fell asleep and again, every
7 case, everybody looked at the cars and they
8 couldn't believe anybody could survive. The same
9 with that car, it was a brand new car, and State
10 Farm rendered it totally demolished, and I think I
11 was kind of demolished. My head, I don't remember
12 anything, I don't remember falling asleep. I
13 remember about, I remember when I was in the
14 hospital, I heard the doctor saying to Robert, she
15 has to stay. I just came out and heard that and
16 went back, and I don't remember anything for a
17 long time, a long time. If I had to say what I
18 did in March, April, May, June, July, August, I
19 don't even remember.

20 And Robert was calling me spacey and
21 goofy, and he was really worried about me, and he
22 told me I should get some kind of help, but I
23 didn't want any help. I had so much pain in my

1 life and I think I must have ignored depression, I
2 was always so low and so empty and I got my little
3 dog Blossom, she was my little girl and nobody
4 could ever love her like me or take care of her,
5 know everything she wanted and went out to the
6 garage and I put her on the passenger seat, I sat
7 down, and then I turned the key on, and I looked
8 at Blossom and I gave her a little kiss, and all
9 of a sudden, my body was always so tense, it just
10 was relaxed, and I felt like I was in a cloud and
11 then Blossom was going like this on me with her
12 little paw, and she licked me and she started
13 whimpering, and I looked at her and I thought, Oh
14 my God, what am I doing to my little girl. I
15 didn't even care about me. So somehow, I dialed
16 some number on the car phone, it was like that and
17 I dialed something and I think it was a lady, she
18 said, turn your car off and open the garage door,
19 and I thought, Oh know, here I am back to earth
20 again. Pain, depression, and some man came. I
21 know some man came in a car, and he put Blossom in
22 the house, and he took me in the house and told me
23 to get some personal things I needed, and then I

1 remember getting in his car and that was it.

2 A week later, I realized I was in a
3 psychiatric ward, and I walked up and down the
4 hall and after I'd been there some days, Robert
5 came to see me. We always took care of each
6 other. We really loved each other. I don't know
7 how all of this happened, but they gave me a lot
8 of medications, and they gave me, I remember the
9 name of only one, I think I had three or four and
10 they gave me Risperdal and that was for voices, to
11 stop the voices. And it worked, but when I got to
12 Marysville, I asked Dr. Naluri that I wanted to
13 stop taking it, because everybody knows
14 everybody's business and I didn't want them making
15 fun of me, but I had some terrible experiences.

16 One day I was seeing these giant anthills
17 like that, all over the floor in my room and I
18 remember telling the warden who came, we were good
19 friends. She came to visit me every week. We had
20 nice talks and she came and I said, my Mom told me
21 if you put coffee around these aunts, they will go
22 away and the major came and everybody came and
23 they were looking at me like I was out of my mind.

1 I guess I was, but then I started falling all over
2 the place and hitting my head again and again, and
3 I fell and hit the corner of the desk once and got
4 two cuts on the bottom of my eyes, and I ended up
5 in the hospital.

6 I don't know how I got there or how long
7 I was there or anything. And it is just like ever
8 since that accident, even right afterwards, I
9 would get up and think its Tuesday but it would be
10 Wednesday, and I just tried so hard to remember
11 Tuesday, but I couldn't, and it was kind of scary.
12 It was really Wednesday, and I couldn't believe
13 it. And I looked at the paper for the date and I
14 asked everybody, and then, there were periods
15 where I just wasn't there. I didn't know what was
16 going on or anything.

17 And after I think seven months after
18 that, after I got out of the hospital, Robert made
19 me go to Social Security and they made me go to a
20 psychiatrist, that was in 2000. And they said, I
21 was, whatever how you say it, and they put me on
22 Social Security and Medicare and Medicaid. And I
23 still was not all there. I can't even remember

1 what I did in the year 2000.

2 I do remember one thing after the
3 accident and before the hospital, I went in my
4 restaurant, locked it up, and walked out and never
5 went back. I left refrigerators full, freezers
6 full, I just couldn't do it anymore. I couldn't
7 take it anymore. It was just too much.

8 And I was working in the Warren office
9 too and juggling. I had a part time man here,
10 part-time girl here, and I would like you to know,
11 sir, that while I had that restaurant, I loved it
12 more than almost 23 years in that plastic
13 surgeon's office. That was a high class thing. I
14 had beautiful clothes. When we went to surgery,
15 people respected us. We helped a lot of people.
16 I had people that were completely scarred and made
17 them want to live again. If it took a year or two
18 years to do reconstructive surgery, I was with
19 them the whole time. And think I saved maybe two
20 lives for sure, one woman was so bad that I
21 helped, that her husband actually shot himself to
22 death. He couldn't stand it anymore looking at
23 her because she had been so beautiful. She showed

1 us pictures. She was a Cuban girl. She was
2 gorgeous.

3 When I was in the restaurant, at the end
4 of the month, people didn't have anymore money,
5 and I learned they got checks like at the
6 beginning of the month, and they would come and we
7 would have a wonderful time. All but three people
8 of all of the customers, there were a lot of them,
9 they were all black, but those three older white
10 people who came, everybody came almost everyday,
11 every afternoon. But at the end of the month,
12 when there was no more money to give the children
13 milk or food, they all came to Donna, Miss Donna,
14 they called me, they got food, they got milk. I
15 had bowls of candy for the children.

16 I gave them the best. We only had the
17 best of everything, and I gave them everything.
18 And some of them needed money to keep their
19 electricity on for their kids, to keep the phone
20 on, in case there was an accident. A phone isn't
21 a luxury anymore, and I helped them, and I never
22 wanted anything back.

23 There came a time in 1980 that I felt

1 very strongly about God, and one God, and I
2 converted to Judaism. The first thing I was able
3 to do was join the Chevre Kadisha, and that is the
4 burial society. You have to be in a state of
5 grace to work for them and we get called out in
6 the middle of the night, very strict about burial,
7 you can't wait, and we would wash them, wash the
8 bodies, and we would talk to them in case they
9 were still around, and we would tell them not to
10 be embarrassed and that God loved them and they
11 were about to go meet God, and then we dressed
12 them in a shroud and it had to be all cotton, no
13 clips, no buttons, and we would actually have to
14 put them in a wooded casket and it had to be
15 wooden, no metal, only wooden, so it would
16 disintegrate into the earth. Then we call Shomar,
17 that means to watch. Usually a little old man,
18 because we never leave a body alone, because you
19 never know what horrendous things people will do.

20 Then the next thing I did, was campaign
21 to save one Falasha Jew, that would be a black Jew
22 in Ethiopia. They were just murdering them,
23 slaughtering them and we had people there that

1 could get them, but it cost thousands and
2 thousands of dollars to get them out of there, and
3 so, I got from the Jewish Society, I got slides
4 and all of that information, materials, and I went
5 from Temple to Temple, and I showed them. And I
6 collected enough money to save one life. They got
7 him, they got him out of the back country and out
8 where he could take a plane and they flew him to
9 Israel to freedom. I am very proud of that. I
10 saved a life.

11 A while later, there was a war, there's
12 always a war in Israel, and I volunteered to work
13 for a month with the plastic surgeons. We had to
14 go into the morgue in the morning and we got, we
15 used a Dermatone, it's a special machine plastic
16 surgeons use. It cuts the right amount of skin
17 off the body. My job was to hold up the leg while
18 the doctor did that and as I did that, I was
19 looking at all of those dead that their mother's
20 raised.

21 So in the afternoon, we would do skin
22 grafts and reconstruction. We even worked on one
23 of our enemies, and we gave him the best care. He

1 was really afraid because those people when they
2 get a Jewish soldier, they slaughter them, they
3 take their penis off, they put it down their
4 throat. That is a regular thing with them. Then
5 they tie them to a car and drag them through the
6 streets. So he was really scared, but we took
7 good care of him, and everybody stayed far away
8 from him. When I went over to him one day and he
9 didn't speak English, but I patted him and I
10 rubbed his arm, and I told him, don't worry its
11 okay, and somehow he understood me and he smiled.

12 No one knows what that can mean unless it
13 is you and you are there.

14 I wanted to get to something that the
15 Ohio Supreme Court typed up. Now I don't know
16 where they got this information, but it hurts me
17 so bad, that I have laid in my bed for I don't
18 know how long, and just talked to you. I talk to
19 you, Your Honor. I said everything I wanted to
20 say to you, and I prayed some day I'd get the
21 chance to say it. This first page, I don't know
22 who did it, it had to be the Prosecution and Paul
23 Monroe, the Detective, who tainted evidence, moved

1 it, put it in, lied under oath. He sat in that
2 chair and raised his hand to God, he swore to tell
3 the truth, and then, I learned what it all means.
4 I swear to tell the truth. People's ears shut off
5 at that, but then I realized. The whole truth and
6 nothing but the truth, because that man took
7 truths that I told him, and he put all of these
8 lies in like that. He didn't tell the truth. He
9 didn't tell the whole truth and he didn't tell
10 nothing but the truth. He lied and lied and lied.
11 So I imagine it was him and the Prosecution, that
12 created this. How would the Supreme Court know?

13 It says Donna Roberts and Robert
14 Fingerhut, next line, Fingerhut bought two
15 Greyhound bus terminals. You don't buy Greyhound
16 bus terminals. They are not for sale.

17 I had 23 years of running an office. I
18 did everything for the doctor. It was me and him,
19 except sometimes I'd bring in my sister to give
20 her a job to do or whatever. You have to be an
21 entrepreneur, and then they give it to you, if you
22 have the money to pay all of the workmen's comp
23 and insurances and everything they say. So it was

1 mine. That was mine. I wasn't a hanger on. I
2 wasn't a money grubber. It was exactly the
3 opposite. I handed the money out to whoever
4 needed it. Then they say that we were divorced to
5 protect his assets and against being sued. We
6 were married in 1983. I was scheduled to close on
7 my dream house I had built on June 14. We got
8 divorced on May 29 to protect my assets. Robert
9 had no assets. He just been through the second
10 horrible divorce of his life. I took \$75,000 out
11 of my tax free Franklin mutual fund as a down
12 payment on that house, and I was making enough
13 money that I paid it, and Robert was working
14 occasional sales jobs here and here and here.

15 I invested in stocks, bonds, mutual
16 funds. I bought real estate and sold it, in fact,
17 I bought Robert's house so he could finally settle
18 his divorce thing. And I sold it like 60 days
19 later and I did make a great profit.

20 So, the way they portray me, Your Honor,
21 its sinful. It is sinful, and you sat here and
22 you heard this and you read these things.

23 Now there is another thing, I have to say

1 and it doesn't have anything to do with
2 mitigation, but I have to get this out, please
3 give me a minute. It says, there was a Frank
4 Reynolds who worked for us. He testified here.
5 He was on mental disability. The man said he was
6 at our Youngstown terminal at 3:30 that afternoon
7 and heard me beg Robert for \$3,000, and when he
8 wouldn't give it to me, I made a mean face. That
9 was his testimony. The man was never there that
10 day sir. Our manager sat there and said, no, he
11 wasn't there. The police officer, Jose Sanchez,
12 sat there and said, no, he wasn't there. He
13 himself said he got a ticket and went off to
14 another city to visit his sister. This is what I
15 had to live with these fake things here. I didn't
16 have to ask Robert for \$3,000.

17 The accounts were mine. The house was
18 mine. The only way we had three cars is on my
19 credit. Three because I bought my parents one.
20 They never had a new car, the same as the year
21 because of us little brats having to be raised and
22 educated, so in 1998, I went and right off the
23 showroom, a silver Ford and brought it to their

1 house with one of those big red bows.

2 My son needed extra money for his
3 townhouse in New Hampshire, I wired \$10,000 to
4 him, the same minute I hung up the phone from
5 talking to him. My sister needed money for
6 college, first the IRS, college, \$5,000, here's a
7 check. I wrote them right in front of Robert. I
8 didn't have to ask him. Then my sister needed
9 money for college, another \$5,000. I helped that
10 girl. You might say I helped save her life. My
11 parents were in their late 50's when she was
12 fifteen. She's fifteen years younger than me and
13 she was getting in all kinds of trouble, and I
14 won't be specific, and they sent her to live with
15 me. So I had the burden of raising a fifteen year
16 old girl that was in big trouble and I did raise
17 her. I loved her. I made my husbands love her.
18 If they didn't, we helped her, everywhere we went,
19 we took her, and then my little sister became a
20 CPA. After going through hell, drugs and other
21 things, and I am proud of that too.

22 Now I have to say more about Paul Monroe.
23 He said I was uncooperative, but in the first

1 things before the trial, I don't know what you
2 call that, he said I was very cooperative. In
3 fact, he came to my house almost everyday. My
4 attorneys were not present. He asked me
5 questions, he asked me to go to the police
6 station. He put a little tape recorder in front
7 of me, and he said, the time, date, my name, his
8 name and Frank Dillon's name, and I spoke to them
9 for an hour and a half, I told them everything. I
10 told them about Nate. I told them all about the
11 whole day, what I did, where I did it, everything
12 before they wanted to know, after, and when he
13 came to court, he said he did not make a tape
14 recording, but he admitted that he and Frank
15 Dillon took copious notes, and you know what --

16 THE COURT: Let me interrupt
17 you, if I may, we can go over all of the facts of
18 the case that were presented to the jury, that is
19 really not the purpose of this hearing. The
20 hearing is to state whether you have anything that
21 you feel you wish to tell the Court that may alter
22 my decision one way or the other that I have to do
23 in regard to either accepting the recommendation

1 or denying the recommendation of the jury as to
2 the death penalty. You have been going over, I
3 listened to the part, which is very correct of
4 your history and that, but you are going through
5 the case now piece meal and that is not part of
6 this hearing. It is what, if anything, you wish
7 to say to the Court as to why the recommendation
8 of the jury should not be upheld.

9 ATTY. DOUGHTEN: Could we have
10 one second?
11 (Off the record)

12 DEFENDANT: I wanted to say
13 that I was a very good writer in high school and
14 in college and I wrote stories because I had a
15 great imagination. I won prizes, medals,
16 certificates, trophies, and I was always as maybe
17 you can surmise that I had a creative mind, and in
18 those letters and conversations with Nate, that is
19 all they were, stories. I never initiated any
20 talk of hurting anyone in the tapes or the
21 letters. But it was my imagination, and I
22 answered and I wrote what he told me to write, and
23 I'm not a bad person, Your Honor.

1 THE COURT: I never thought for
2 a moment that you are a bad person.

3 DEFENDANT: I never intended
4 for anything like that to happen, and I couldn't
5 believe it, and I still can't believe it. We
6 loved each other and we had a good life.

7 THE COURT: Anything else that
8 counsel wishes to submit?

9 ATTY. DOUGHTEN: We really have
10 nothing to add. I think what she said speaks for
11 itself.

12 THE COURT: I have heard some
13 things that I have not heard before. This is set
14 for next Monday, I have to get that all resolved
15 in my mind by then.

16 ATTY. DOUGHTEN: Can I make one
17 thing clear for the record? When I had said we
18 had nothing say in her behalf. Our position is,
19 we have proffered what we think we need to make --
20 I understand the Court is under order from the
21 Supreme Court. I urge you to listen to what she
22 said, which I believe the Court has done.

23 ATTY. DIXON: Can we have a

1 moment, Your Honor?

2 (Off the Record)

3 ATTY. DOUGHTEN: Nothing
4 further, Your Honor.

5 THE COURT: Thank you gentlemen
6 for your professionalism. Mr. Bailey, do you have
7 anything further?

8 ATTY. BAILEY: No, Your Honor.

9 THE COURT: This will reconvene
10 next Monday at 1:00 on the 29th.

11 ATTY. DOUGHTEN: Your Honor, we
12 have the family here, and I think in Court. I
13 indicated to the Court, the Court is under the
14 restrictions from the Supreme Court we understand,
15 but we wanted to proffer what the family would
16 have said, if they were permitted, can I just give
17 that to the Court or would you rather it was
18 filed?

19 THE COURT: You may do that.
20 You are going to do that in writing?

21 ATTY. DOUGHTEN: Yes.

22 THE COURT: Let me see it
23 first.

1 ATTY. BAILEY: The State has
2 never seen that proffer, the Defendant's family
3 statement, I believe that is what it is. Could
4 you have the court reporter make a copy for the
5 State?

6 THE COURT: Yes, since it is a
7 proffer for the record, I think they should have
8 an opportunity to see it also. Those are letters
9 from the sister and brother. This matter will be
10 re-set for Monday. Thank you.

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12 (END OF HEARING AT 2:50 p.m.)

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1 MONDAY, OCTOBER 29, 2007

2 RESENTENCING HEARING

3 IN OPEN COURT AT 1:25 p.m.

4 THE COURT: We're here today --
5 would you come forward with your client please?

6 We're here today for resentencing,
7 allocution having occurred last week. I would
8 again ask if there is anything further that
9 counsel or the Defendant wishes to place on the
10 record.

11 ATTY. DOUGHTEN: Just briefly.
12 Part of the frustration with doing this kind of
13 work is that the statute is designed so that the
14 worst of the worst are the ones that receive the
15 death penalty. It is our strong belief that
16 because of Donna's mental instability for lack of
17 a better term, that this isn't happening in this
18 case. I think her behavior and her decisions at
19 the first trial were dictated by injuries and
20 other perhaps post-traumatic stress, a number of
21 mental disabilities, organic damage, if you will,
22 so that her decisions not to put on mitigation,
23 her decisions on whether to have counsel argue

1 were really dictated by that, and those originally
2 doing the competency hearing, the doctor at that
3 time, did not have all of this information.

4 What we believe, and I understand you are
5 restricted by the Ohio Supreme Court, but it is
6 our belief that Donna is not one of the worst of
7 the worst, that she had no prior record, that if
8 not for the aberration caused by all of these
9 mental disabilities, this would never have
10 happened and she wouldn't be here, and it is our
11 request that the Court consider as much as it is
12 allowed to by the dictates of the Supreme Court,
13 why Donna said what she did, why she did what she
14 did. Thank you very much.

15 THE COURT: Do you have
16 anything further to say Donna?

17 DEFENDANT: No.

18 THE COURT: I'm sorry to hear
19 about the passing of your mother.

20 DEFENDANT: Thank you.

21 THE COURT: The Court has
22 prepared and will file a judgment entry in this
23 case of my review, that will be filed this

1 afternoon. I have taken into account the
2 additional information which you have proffered on
3 behalf of your client, which will become a part of
4 this record for any further appeal. Some of what
5 you have presented may in some way be an
6 explanation of how the entire case went before,
7 but I do not feel I have the luxury of taking that
8 into account at this point because as I have told
9 you many times and you are well aware, I have
10 approached this within the directions given to me
11 by the Supreme Court when this was sent back on
12 the very narrow portion of the case.

13 Had the information that you have
14 presented presently been presented at the other
15 trial, I have no opinion on whether that would
16 have made a difference or not, but it is something
17 that you will have an opportunity to work with.

18 Now the Court has considered the record,
19 the oral statements, as well as the principles and
20 purposes of sentencing under Ohio Revised Code
21 Section 2929.11. I have reviewed the other
22 material. I feel that it is relevant and should
23 be admitted, has been admitted for appeal

1 purposes.

2 Pursuant to law, this Court having
3 determined in a separate opinion of specific
4 findings that the aggravating circumstances as to
5 the count of aggravated murder outweigh the
6 mitigating factors by proof beyond a reasonable
7 doubt, that Jury's recommendation is accepted.

8 I have made inquiry as to whether there
9 is any other reason why sentence should not be
10 pronounced at this point.

11 ATTY. DOUGHTEN: We are ready
12 to go forward at this time.

13 THE COURT: It is therefore
14 Ordered, Adjudged and Decreed that the Defendant,
15 Donna M. Roberts, be taken from this Courtroom to
16 the Trumbull County jail and from there to the
17 Correction Reception Center at Marysville, Ohio,
18 and is sentenced to death on October 28, 2008,
19 on Count One. And she shall be imprisoned therein
20 for the stated prison term of ten years on Count
21 Three, plus a mandatory term of three years on the
22 Firearms Specification, to be served prior to and
23 consecutive to the sentence imposed in Count

1 Three. Further, ten years incarceration on Count
2 Four, plus a mandatory term of three years on the
3 Firearms Specification; that to be served prior to
4 and consecutive to the sentence imposed in Count
5 Four. That sentence in Count Four to be served
6 consecutively to the sentence imposed on Count
7 Three. And the Firearms Specification in Counts
8 Three and Four shall merge as one sentence in
9 Count Three as a matter of law. The Defendant is
10 ordered to pay costs. And once that is
11 determined, execution is awarded. That is the
12 judgment of this Court.

13 Does anyone have anything further to say
14 at this point?

15 ATTY. DOUGHTEN: No, Your
16 Honor.

17 THE COURT: Donna, I have a
18 duty to advise you --

19 ATTY. DOUGHTEN: Could I have
20 one second?

21 THE COURT: Yes.

22 ATTY. DOUGHTEN: We are ready.
23 Thank you.

1 THE COURT: You have a right to
2 file an appeal in this matter. If you are unable
3 to pay the cost of the appeal or the money to hire
4 an attorney to represent you, that appeal will be
5 filed on your behalf and you will be provided
6 counsel at no cost to yourself. The same as if
7 you are not able to afford the cost of the
8 paperwork and documentation necessary for the
9 appeal, that will be paid on your behalf by the
10 State of Ohio. Now you have a right to have that
11 notice of appeal timely filed on your behalf. And
12 upon your request, this Court shall appoint
13 counsel for that appeal.

14 Counsel, do you have any requests at this
15 time concerning the Appellate rights of your
16 client?

17 ATTY. DOUGHTEN: Yes, Miss
18 Roberts would like to have counsel appointed. She
19 is indigent. We'll have an indigency affidavit
20 filled out today and provided to the Court.

21 THE COURT: Will you gentlemen
22 be handling that?

23 ATTY. DOUGHTEN: We would

1 prefer to. I don't think there would be a
2 conflict. We were not the trial attorneys. We
3 are for this very limited purpose.

4 THE COURT: That is a decision
5 you have to make and I would probably agree with
6 you at this point. There would appear to be no
7 conflict. I would ask you to file a formal motion
8 to that effect for my signature and we'll make
9 arrangements about any costs that are concerned.

10 ATTY. DOUGHTEN: Thank you.

11 THE COURT: Anything further
12 from the prosecution?

13 ATTY. BECKER: No, sir, Your
14 Honor.

15 ATTY. DOUGHTEN: Nothing
16 further.

17 THE COURT: I have to prepare a
18 sentencing journal, and again these are usually
19 done as a matter of course by the prosecution.
20 Because I have already dictated what my judgment
21 on this matter is, if there isn't some reason that
22 you care to disagree with that, I would ask you to
23 submit a journal entry and the Prosecutor to

1 submit a journal entry.

2 ATTY. DOUGHTEN: Just so we are
3 clear, you are talking about the sentencing entry,
4 not the Opinion.

5 THE COURT: No.

6 ATTY. DOUGHTEN: I don't see
7 any problem with the sentencing journal. We do
8 not object. We do not object to the Prosecutor if
9 he just does the sentencing entry, and we waive
10 any right we have to file our own.

11 THE COURT: They will send you
12 a copy for your approval in any event.

13 ATTY. DOUGHTEN: We are fine
14 with that.

15 ATTY. BECKER: Just to be
16 certain here, there is no objection to the State
17 preparing the sentencing entry.

18 THE COURT: I have given the
19 entry, I have given the contents of the entry and
20 as we have usually done here and done in most of
21 the counties that I am aware of, the Prosecutor
22 will prepare that according to the Judge's
23 instruction. That is always done with approval of

1 counsel. Counsel has the right to submit your own
2 entry.

3 ATTY. DOUGHTEN: Just so the
4 record is clear. That is a separate entry as
5 opposed to the 03(f) entry that the Court is
6 required to do.

7 THE COURT: Right. That will
8 be prepared here shortly and you can have a copy
9 of that.

10 ATTY. BECKER: So the Court is
11 ordering the State to prepare the sentencing
12 entry.

13 THE COURT: According to the
14 sentence that I have rendered.

15 ATTY. BECKER: And there is no
16 objection, although we'll provide counsel for the
17 defense a copy.

18 THE COURT: They have stated on
19 the record that they do not object to that.

20 ATTY. DOUGHTEN: That is
21 correct.

22 ATTY. BECKER: We'll prepare
23 that and title it as a proposed sentencing entry.

1 I'll make sure they will get a copy. I will save
2 a copy or put a copy out on the shared I drive
3 that we share or I'm sorry G drive that we share
4 with the Courts and then if the Court needs to
5 make any changes or feels any changes are needed,
6 the Court can make those.

7 THE COURT: Or if there's any
8 objection.

9 ATTY. BECKER: Yes, or if
10 there's any objections.

11 THE COURT: Donna, I suspect
12 this is not the last time I'll see you, but take
13 care.

14 ATTY. DOUGHTEN: Thank you.

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16 (END OF RESENTENCING AT 1:35 p.m.)

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REPORTER'S CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true and correct transcript of the hearings held as shown by the stenographic notes taken by me at the time of said hearings.

11/7/2007
DATE

Mary Ann Mills
MARY ANN MILLS, R.P.R.

IN THE COURT OF COMMON PLEAS

TRUMBULL COUNTY, OHIO

TRIAL COURT CASE NO. 01-CR-793

SUPREME COURT CASE NO. 07-2288

STATE OF OHIO vs. DONNA M. ROBERTS

LIST OF EXHIBITS

Defendant's Exhibit A

Defendant Robert's Appendix to Third Motion to Proffer
Evidence (binder)

Defendant's Exhibit B

Letters to Judge John M. Stuard

State's Exhibit No. 1

Forensic Psychiatric Center's Competency Evaluation

Submitted by:

Mary Ann Mills 12/18/2007

Mary Ann Mills, Official Court Reporter

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IN THE COURT OF COMMON PLEAS

TRUMBULL COUNTY, OHIO

TRIAL COURT CASE NO. 01-CR-793

SUPREME COURT OF OHIO CASE NO. 03-1441 *old No.*

2014-989 New No.

STATE OF OHIO vs. DONNA M. ROBERTS

LIST OF TRIAL EXHIBITS

AND MITIGATION HEARING EXHIBITS

EXHIBIT LIST
TRUMBULL COUNTY
CLERK OF COURTS

STATE OF OHIO

VS

DONNA ROBERTS; 01CR793(SUPREME COURT 03-1441)

NOTE: THE MAJORITY OF EXHIBITS FROM THIS CASE ARE SHARED WITH CASE 01CR794.(STATE OF OHIO VS NATHANIAL JACKSON). THE JACKSON CASE IS PRESENTLY BEING HEARD AT THE SUPREME COURT(03-137) AND THEREFORE THE EXHIBITS TRANSMITTED FOR THE JACKSON CASE ARE UNAVAILABLE TO TRANSMIT FOR THE ROBERTS CASE. SEE BELOW FOR BREAKDOWN OF EXHIBITS FOR ROBERTS AND THOSE SHARED WITH JACKSON.

PG 2-EXHIBITS FROM SUPPRESSION HEARING(ROBERTS)

PG 3 THRU 16-EXHIBITS SHARED WITH NATHANIAL JACKSON CASE

PG17 STATES EXHIBITS 378, 378A, 309A, SHARED WITH NATHANIAL JACKSON CASE.
STATES EXHIBITS 403 THRU 408 FOR DONNA ROBERTS CASE.

PG 18-DEFENDANTS EXHIBITS, JOINT EXHIBIT 1, COURTS EXHIBITS, SENTENCING EXHIBIT "A"(SEALED).(ROBERTS)

THE COURT REPORTER HAS LISTED EXHIBIT 309A ON COURTS EXHIBIT LIST FILED 1/20/04.(#136A ON INDEX) THE CLERKS OFFICE CAN LOCATE NO SUCH EXHIBIT WITH THE EVIDENCE FILED. ALSO, EXHIBIT 309A IS NOT LISTED ON THE LIST OF EXHIBITS AS IT APPEARS IN THE NATHANIAL JACKSON TRANSCRIPTS.

EXHIBITS FROM MOTION TO SUPPRESS HEARING

STATE'S EXHIBITS:

1. Consent to search form by D. Roberts Admitted

DEFENDANT'S EXHIBITS:

- | | |
|------------------------|----------|
| A. Property receipt | Admitted |
| B. List of medications | Admitted |

Exhibit No.	Description	Admitted
1	911 Tape	No objection
1A	911 Paper work	No Objection
2	Crime Scene Video	No objection
3	Crime Scene Diagram	No objection
4	Photo	No Objection
5	Photo	No Objection
6	Photo	No Objection
7	Photo	No Objection
8	Photo	No Objection
9	Photo	No Objection
10	Photo	No Objection
11	Photo	No Objection
12	Photo	No Objection
13	Photo	No Objection
14	Photo	No Objection
15	Photo	No Objection
16	Photo	No Objection
17	Photo	No Objection
18	Photo	No Objection
19	Photo	No Objection
20	Photo	No Objection
21	Photo	Obj sustained
22	Photo	Withdrawn
23	Photo	Withdrawn
24	Photo	Obj sustained
25	Photo	Obj sustained
26	Photo	Obj sustained
27	Photo	Adm. over obj
28	Photo	withdrawn
29	Photo	Withdrawn
30	Photo	Withdrawn
31	Photo	Obj sustained
32	Photo	Withdrawn
33	Photo	i
34	Photo	No Objection
35	Photo	Withdrawn
36	Photo	Withdrawn
37	Photo	Obj sustained
38	Photo	Obj sustained
39	Photo	Obj sustained
40	Photo	No Objection
41	Photo	Withdrawn
42	Photo	Withdrawn
43	Photo	Obj sustained
44	Photo	Obj sustained
45	Photo	Withdrawn
46	Photo	Withdrawn
47	Photo	No Objection
48	Photo	No Objection
49	Photo	No Objection
50	Photo	Withdrawn
51	Photo	No Objection
52	Photo	No Objection
53	Photo	No Objection
54	Photo	No Objection
55	Photo	No Objection
56	Photo	No Objection
57	Photo	Adm over obj
58	Photo	Obj sustained
59	Photo	Obj sustained
60	Photo	Obj sustained

61	Photo Shirt	No Objection
62	Photo Shirt	Obj sustained
63	Photo - Victim	Obj sustained
64	Bullet Recovered from Brain of Victim	No Objection
65	Bullet Recovered from Brain of Victim	No Objection
66	Clothes and Jewelry	No Objection
67	Photo X-Ray	No Objection
68	Photo Red's Jacket	No Objection
69	Tire Marks in Grass	No Objection
70	N. Side Exterior of House	No Objection
71	Front Exterior of House	No Objection
72	Rear Exterior of House	No Objection
73	S. Side Exterior of House	No Objection
74	Main Bathroom	No Objection
75	View of man door screen from house	No Objection
76	View of man door screen from garage	No Objection
77	Spare Bedroom	No Objection
78	Clothing - Spare Bedroom	No Objection
79	Blood spatter - peninsula	Withdrawn
80	Blood Spatters - on wall by door	Withdrawn
81	Blood Spatters and smear	Withdrawn
82	Blood Spatters	Withdrawn
83	Inside Garage looking into residence	No Objection
84	Blood drops - garage	No Objection
85	Garage	Withdrawn
86	Blood Spatters - garage	No Objection
87	Over view garage	No Objection
88	Peninsula & Wall - blood splatters	Withdrawn
89	Different view as in 88	Withdrawn
90	Blood Drops in garage	No Objection
91	Kitchen door closed	No Objection
92	Overview garage	No Objection
93	Back of man door w/ blood	No Objection
94	Interior side of man door	No Objection
95	Eye glasses and broken lag bolt - garage	No Objection
96	Eye glasses - garage	No Objection
97	Stair wall ceiling	No Objection
98	Receipt dated 8-26-04	No Objection
99	Victim	No objection
100	Victim -back close up	No objection
101	Small key found under victim	No Objection
102	Overview Bedroom	No Objection
103	Bedroom master	No Objection
104	bedroom closet	No Objection
105	Photo	No Objection
106A	Photo	No Objection
106	Photo	No Objection
106A	Photo	No Objection
107	Photo	No Objection
107A	photo	Withdrawn
108	Victim	No Objection
108A	Victim Face down	Withdrawn
109	Dry Wall Hole	No objection
109A	Victim face down	Withdrawn
110	Victim in Kitchen	No Objection
111	Victim lower torso	Withdrawn
112	Victim - Footprints w/ small dots	Withdrawn
113	Ashtray	No Objection
114	Ashtray	No Objection
115	Living Room	No Objection
116	Living Room	No Objection
117	Living Room	No Objection

119	Office Area	No Objection
119	Office Area	No Objection
120	Office Area	No Objection
121	Office Area	No Objection
122	Front Door Looking In	No Objection
122	Dining Room - Orislee Jacket	No Objection
124	Office Area w/ ball cap	No Objection
125	Dry Wall Hole	No Objection
126	Front View of Car	No Objection
127	Left rear red car	No Objection
128	Left view red car	No Objection
129	Garage Door & Driver door	No Objection
130	Family Room - overview	No Objection
131	Table w/ 2 roaches	No Objection
132	Garage w/ view of Gun	No Objection
133	Blood Drops in garage	Withdrawn
134	Overview - Office	No Objection
135	Kitchen - Door	Withdrawn
136	Open Door, Kitchen area	Withdrawn
137	Kitchen - receipt Walmart 8:00 p.m.	No Objection
138	Stainless Steel Revolver	No Objection
139	Close - up Footprint & Garage	No Objection
140	Stairwell & Basement	No Objection
141	Stairwell & Basement	No Objection
142	Cabinet	No Objection
143	Close - Up Cabinet	No Objection
144	Kitchen - Different View	No Objection
145	Pier One Import Bag w/ wine glasses	No Objection
146	Front View of Car	No Objection
147	Rt Side View of Car	No Objection
148	Rear view of Car	No Objection
149	Left Side view of Car	No Objection
150	Double Lined Bag "Nate Jackson"	No Objection
151	Receipt - Pier One Import - Lorain Rd	No Objection
152	Assorted Sandy, toothpaste	No Objection
153	Customer Receipt	No Objection
154	Handcuff Box w/ key - no cuffs	No Objection
155	Hair Comb	No Objection
156	Front View of Car	No Objection
157	Rear view of Car	No Objection
158	Wide Angle Rear of Car	Withdrawn
159	Rt Side View of Car	No Objection
160	Front View of Car - Left Corner	No Objection
161	Rear view of Car - Damage to Bumper	Withdrawn
162	Front View of Car	No Objection
163	Exterior to Interior - Blood Smears	No Objection
164	Visor Area	No Objection
165	Interior area above head w/ blood	No Objection
166	Exterior	No Objection
167	Front Driver Seat	Withdrawn
168	Visor Area - Removed	No Objection
169	Door Handle	No Objection
170	Door Handle w/ blood	No Objection
171	Driver side visor clamp	No Objection
172	Front Passenger Seat - Cell Phone	No Objection
173	Front Passenger Seat - Cell Phone	No Objection
174	Interior -Left Console	No Objection
175	Hookin w/ Blood Smear	No Objection
176	Footmat	Withdrawn
177	Trunk Open	No Objection
178	Keys in Ignition	No Objection
179	Rt Interior - Head Rest	Withdrawn

180	Driver Side Console	No Objection
181	Passenger Side Dashboard	No Objection
182	Passenger side door - interior	No Objection
183	Passenger side door - exterior	No Objection
184	Left side of car w/ dashboard	No Objection
185	Rt side back seat	No Objection
186	Front driver compartment	No Objection
187	Exterior thru rear left door	No Objection
188	Keys	Will Draw
189	Cell Phone	Will Draw
190	Keys - Blue Molt	Will Draw
191	Driver side - release button	No Objection
192	Wagon Wheel Photo	No objection
193	Wagon Wheel Photo	No objection
194	Wagon Wheel Photo	No objection
195	Wagon Wheel Photo	No objection
196	Wagon Wheel Photo	No objection
197	Photograph Items Recovered Days Inn	No objection
198	Photo of Chrysler	No objection
199	Days Innn Photographs	No objection
200	Days Innn Photographs	No objection
201	Days Innn Photographs	No objection
202	Days Innn Photographs	Objection Sustained
203	Days Innn Photographs	No objection
204	Days Innn Photographs	Objection Sustained
205	Days Innn Photographs	No objection
206	Days Innn Photographs	No objection
207	Days Innn Photographs	No objection
208	Days Innn Photographs	No objection
209	Days Innn Photographs	No objection
210	Days Innn Photographs	No objection
211	Days Innn Photographs	No objection
212	Days Innn Photographs	No objection
213	Days Innn Photographs	No objection
214	Days Innn Photographs	No objection
215	Days Innn Photographs	No objection
216	Days Innn Photographs	No objection
217	Days Innn Photographs	No objection
218	Days Innn Photographs	No objection
219	Days Innn Photographs	No objection
220	Days Innn Photographs	No objection
221	Days Innn Photographs	No objection
222	Days Innn Photographs	No objection
223	Days Innn Photographs	No objection
224	Days Innn Photographs	No objection
225	Days Innn Photographs	No objection
226	Days Innn Photographs	No objection
227	Photographs of Wirt Street	No objection
228	Photographs of Wirt Street	No objection
229	Photographs of Wirt Street	No objection
230	Photographs of Wirt Street	No objection
231	Photographs of Wirt Street	No objection
232	Photographs of Wirt Street	No objection
233	Wirt Street Photographs	No objection
234	Wirt Street Photographs	No objection
235	Front view - Nate Jackson	No Objection
236	Rear view Nate Jackson	No Objection
237	Full body shot	No Objection
238	Rt arm and hand	No Objection
239	Front view - Nate Jackson	No Objection
240	Left & Rt knee	No Objection
241	View of Hands & Wound	No Objection

271D	Letters From Donna to Nate	
271D1	12/03/01	Admitted
271D2	11/29/01	Admitted
271D3	11/29/01	Admitted
271D4	11/28/01	Admitted
271D5	11/28/01	Admitted
271D6	11/27/01	Admitted
271D7	11/27/01	Admitted
271D8	11/26/01	Admitted
271D9	11/26/01	Admitted
271D10	11/24/01	Admitted
271D11	11/23/01	Admitted
271D12	11/23/01	Admitted
271D13	11/22/01	Admitted
271D14	11/22/01	Admitted
271D15	11/22/01	Admitted
271D16	11/22/01	Admitted
271D17	11/21/01	Admitted
271D18	11/21/01	Admitted
271D19	11/20/01	Admitted
271D20	11/20/01	Admitted
271D21	11/20/01	Admitted
271D22	11/20/01	Admitted
271D23	11/19/01	Admitted
271D24	11/19/01	Admitted
271D25	11/19/01	Admitted
271D26	Empty	Admitted
271D27	11/16/01	Admitted
271D28	11/16/01	Admitted
271D29	11/15/01	Admitted
271D30	Empty	Admitted
271D31	11/12/01	Admitted
271D32	11/10/01	Admitted
271D33	11/10/01	Admitted
271D34	11/10/01	Admitted
271D35	11/10/01	Admitted
271D36	11/09/01	Admitted
271D37	11/09/01	Admitted
271D38	11/09/01	Admitted
271D39	11/09/01	Admitted
271D40	11/08/01	Admitted
271D41	11/08/01	Admitted
271D42	11/08/01	Admitted
271D43	11/07/01	Admitted
271D44	11/07/01	Admitted
271D45	11/07/01	Admitted
271D46	11/07/01	Admitted
271D47	Empty	Admitted
271D48	11/06/01	Admitted
271D49	11/06/01	Admitted
271D50	Empty	Admitted
271D51	11/05/01	Admitted
271D52	11/05/01	Admitted
271D53	11/03/01	Admitted
271D54	11/03/01	Admitted
271D55	11/02/01	Admitted
271D56	11/02/01	Admitted
271D57	11/02/01	Admitted
271D58	11/01/01	Admitted
271D59	11/01/01	Admitted
271D60	Halloween card	Admitted
271D61	10/31/01	Admitted

271D62		10/30/01	Admitted
271D63		10/29/01	Admitted
271D64		10/29/01	Admitted
271D65		10/28/01	Admitted
271D66		10/27/01	Admitted
271D67		10/26/01	Admitted
271D68		10/26/01	Admitted
271D69		10/26/01	Admitted
271D70		10/25/01	Admitted
271D71		10/25/01	Admitted
271D72		10/24/01	Admitted
271D73		10/24/01	Admitted
271D74		10/23/01	Admitted
271D75		10/23/01	Admitted
271D76		10/23/01	Admitted
271D77		10/23/01	Admitted
271D78		10/22/01	Admitted
271D79	Empty		Admitted
271D80		10/21/01	Admitted
271D81		10/20/01	Admitted
271D82		10/20/01	Admitted
271D83		10/20/01	Admitted
271D84		10/20/01	Admitted
271D85		10/19/01	Admitted
271D86		10/19/01	Admitted
271D87		10/19/01	Admitted
271D88		10/19/01	Admitted
271D89		10/18/01	Admitted
271D90	Empty		Admitted
271D91		10/18/01	Admitted
271D92		10/17/01	Admitted
271D93		10/16/01	Admitted
271D94		10/16/01	Admitted
271D95		10/15/01	Admitted
271D96		10/15/01	Admitted
271D97		10/15/01	Admitted
271D98		10/13/01	Admitted
271D99		10/13/01	Admitted
271D100		10/13/01	Admitted
271D101		10/12/01	Admitted
271D102		10/12/01	Admitted
271D103		10/12/01	Admitted
271D104	Empty		Admitted
271D105		10/12/01	Admitted
271D106		10/12/01	Admitted
271D107		10/11/01	Admitted
271D108		10/11/01	Admitted
271D109		10/11/01	Admitted
271D110		10/10/01	Admitted
271D111		10/10/01	Admitted
271D112		10/10/01	Admitted
271D113		10/08/01	Admitted
271D114		10/08/01	Admitted
271D115		10/06/01	Admitted
271D116		10/06/01	Admitted
271D117		10/06/01	Admitted
271D118		10/05/01	Admitted
271D119		10/05/01	Admitted
271D120		10/05/01	Admitted
271D121		10/05/01	Admitted
271D122		10/05/01	Admitted
271D123		10/05/01	Admitted

271D124		10/05/01	Admitted
271D125		10/04/01	Admitted
271D126		10/04/01	Admitted
271D127		10/02/01	Admitted
271D128		10/02/01	Admitted
271D129		10/02/01	Admitted
271D130	Unknown		Admitted
271D131	Unknown		Admitted
271D132	Unknown		Admitted
271D133	Unknown		Admitted
271D134	Unknown		Admitted
271D135	Unknown		Admitted
271D136	Unknown		Admitted
271D137	Unknown		Admitted
271D138	Unknown		Admitted
271D139		11/26/01	Admitted

273N	Letters from Nate to Donna	Admitted
273N1	12/01/01	Admitted
273N2	11/30/01	Admitted
273N3	11/29/01	Admitted
273N4	11/28/01	Admitted
273N5	11/27/01	Admitted
273N6	11/26/01	Admitted
273N7	11/25/01	Admitted
273N8	11/23/01	Admitted
273N9	11/22/01	Admitted
273N10	11/20/01	Admitted
273N11	11/19/01	Admitted
273N12	11/17/01	Admitted
273N13	11/16/01	Admitted
273N14	11/14/01	Admitted
273N15	11/14/01	Admitted
273N16	11/13/01	Admitted
273N17	11/12/01	Admitted
273N18	11/12/01	Admitted
273N19	11/10/01	Admitted
273N20	11/09/01	Admitted
273N21	11/07/01	Admitted
273N22	11/06/01	Admitted
273N23	11/08/01	Admitted
273N24	11/05/01	Admitted
273N25	11/03/01	Admitted
273N26	11/01/01	Admitted
273N27	11/01/01	Admitted
273N28	10/31/01	Admitted
273N29	10/30/01	Admitted
273N30		Admitted
273N31	10/28/01	Admitted
273N32	10/27/01	Admitted
273N33		Admitted
273N34	10/25/01	Admitted
273N35	10/25/01	Admitted
273N36	10/25/01	Admitted
273N37	10/24/01	Admitted
273N38	10/23/01	Admitted
273N39	10/22/01	Admitted
273N40	10/21/01	Admitted
273N41	10/21/01	Admitted
273N42	10/20/01	Admitted
273N43	10/19/01	Admitted
273N44	10/18/01	Admitted
273N45	10/17/01	Admitted
273N46	10/16/01	Admitted
273N47	10/16/01	Admitted
273N48	10/15/01	Admitted
273N49	10/14/01	Admitted
273N50	10/12/01	Admitted
273N51	10/10/01	Admitted
273N52	10/10/01	Admitted
273N53	10/08/01	Admitted
273N54	10/05/01	Admitted
273N55	10/07/01	Admitted
273N56	10/04/01	Admitted
273N57	10/04/01	Admitted
273N58	10/02/01	Admitted
273N59	10/01/01	Admitted
273N60	10/01/01	Admitted
273N61	09/30/01	Admitted

273N62	09/27/01	Admitted
273N63	09/27/01	Admitted
273N64	07/12/01	Admitted
273N65	06/28/01	Admitted
273N66	06/09/01	Admitted
273N67	05/18/01	Admitted
273N68	05/15/01	Admitted
273N69	05/12/01	Admitted
273N70	05/10/01	Admitted
273N71	05/09/01	Admitted
273N72	05/06/01	Admitted
273N73	05/04/01	Admitted
273N74	05/03/01	Admitted
273N75	04/28/01	Admitted
273N76	02/24/01	Admitted
273N77	04/23/01	Admitted
273N78	04/22/01	Admitted
273N79	04/19/01	Admitted
273N80	04/16/01	Admitted
273N81	04/16/01	Admitted
273N82	04/15/01	Admitted
273N83	04/11/02	Admitted
273N84	04/10/01	Admitted
273N85	04/10/01	Admitted
273N86	04/09/01	Admitted
273N87	04/08/01	Admitted
273N88	04/04/01	Admitted
273N89	04/02/01	Admitted
273N90	Unknown	Admitted
273N91	03/31/01	Admitted
273N92	03/29/01	Admitted
273N93	03/26/01	Admitted
273N94	03/25/01	Admitted
273N95	03/23/01	Admitted
273N96	03/22/01	Admitted
273N97	03/20/01	Admitted
273N98	03/20/01	Admitted
273N99	03/20/01	Admitted
273N100	03/19/01	Admitted
273N101	03/19/01	Admitted
273N102	03/19/01	Admitted
273N103	03/19/01	Admitted
273N104	03/15/01	Admitted
273N105	03/13/01	Admitted
273N106	03/12/01	Admitted
273N107	03/11/01	Admitted
273N108	03/09/01	Admitted
273N109	03/06/01	Admitted
273N110	03/04/01	Admitted
273N111	03/03/01	Admitted
273N112	03/02/01	Admitted
273N113	02/27/01	Admitted
273N114	02/25/01	Admitted
273N115	02/20/01	Admitted
273N116	02/23/01	Admitted
273N117	02/22/01	Admitted
273N118	02/19/01	Admitted
273N119	02/16/01	Admitted
273N120	02/15/01	Admitted
273N121	Unknown	Admitted
273N122	02/13/01	Admitted
273N123	02/12/01	Admitted

273N124	02/09/01	Admitted
273N125	02/07/01	Admitted
273N126	02/04/01	Admitted
273N127	02/01/01	Admitted
273N128	02/01/01	Admitted
273N129	01/26/01	Admitted
273N130	01/19/01	Admitted
273N131	01/17/01	Admitted
273N132	01/21/01	Admitted
273N133	01/16/01	Admitted
273N134	01/12/01	Admitted
273N135	01/05/01	Admitted
273N136	01/01/01	Admitted
273N137	12/27/00	Admitted
273N138	12/27/00	Admitted
273N139	Unknown	Admitted
273N140	12/11/00	Admitted
273N141	Unknown	Admitted
273N142	Unknown	Admitted
273N143	05/01/01	Admitted

242	Left Hand - Wound	No Objection
243	Front view w/ bandage	No Objection
244	Side view Finger	No Objection
245	Left Hand - wrist to finger tip	No Objection
246	Left Hand Palm up	No Objection
247	Back side of Hand	No Objection
248	Both Hands	No Objection
249	Head and Shoulders	Admitted over Obj
250	Full body shot	Objection Sustained
251	Handgun - .38 Taurus	No Objection
252	Five (5) Live Rounds from Taurus	No Objection
252A	Envelope Containing Test Fire Rounds	No Objection
253	Right Eye glass Lens	No Objection
254	Eye glasses Missing Right Lens	No Objection
255	Cotton Swab - Front Door Hallway	No Objection
256	Dry Wall Cut out w/ Bullet Hole	No Objection
257	Bullet Recovered from Dry Wall	No Objection
258	Cincinnati Red's Jacket - From Victim	No Objection
259	Bullet Recovered from Clothing of Victim	No Objection
260	Death Certificate	No Objection
261	Coroner's Verdict	No Objection
262	Autopsy Protocol - 11 pages	No Objection
263	Microscopic Examination	No Objection
264	Toxicology - 1 page Front and Back	No Objection
264A	Radiology Report	No Objection
265	Blood - Drawn from Robert Fingerhut	No Objection
266	Bullet Recovered from Brain of Victim	No Objection
267	Driver's Side Visor	No Objection
268	Visor Clamp	No Objection
269	Keys Recovered from Ignition	No Objection
270	Bag Containing Letters	No Objection
271	Letters from Donna to Nate (See attached)	No Objection
272	No Exhibit	No Objection
273	Letters from Nate to Donna (See Attached)	No Objection
274	No Exhibit	No Objection
275A	Hand Writing Analysis	No objection
275B	Hand Writing Analysis	No objection
276A	Hand Writing Standard	No Objection
276B	Hand Writing Standard	No Objection
276B1	CCA Records	No Objection
276B2	CCA Records	No Objection
276B3	CCA Records	No Objection
276B4	CCA Records	No Objection
276B5	CCA Records	No Objection
276B6	CCA Records	No Objection
276B7	CCA Records	No Objection
276C	Hand Writing Standard	No Objection
276C1	Prison Records	No Objection
276C2	Prison Records	No Objection
276C3	Prison Records	No Objection
276C4	Prison Records	No Objection
277	01-35755- Two (2) pages	No Objection
278	01-35755-A	No Objection
279	01-35755-B	Obj sustained
280	01-35755-C	No Objection
281	01-35755-D	Admitted over Obj
282A	01-35755 - Mike Roberts (2) Pages	No Objection
282B	01-35755 - Mike Roberts (2) Pages	No Objection
282C	01-35755 - Mike Roberts Suoplemental	No Objection
283	01-35755 - Cindy Maylee (2) Pages	No Objection
284	Dale Laux - (2) Pages	No Objection
285	01-35755 - Cindy Maylee (2) Pages	No Objection

323	\$300,000 - State Farm Insurance Policy 17 pages	No objection
324	Constitutional Rights Waiver	No Objection
325	Video Tape Confession	No Objection
326	Transcript of Video Tape Confession 88 Pages	No Objection
327A	Certification - ATF - 1page	No objection
327B	Taurus IL46854 - 2 pages	No objection
327C	Taurus JH14188 - 1 page	No objection
360	Cd containing 19 Telephone Conversations	No Objection
361	Telephone Log Record 3 pages	Adm. over obj
362	Audio Tape of 10-05-01 Recording	No Objection
362A	Transcript of 10-05-01 Recording	No Objection
363	Audio Tape of 10-25-01 Recording	No Objection
363A	Transcript of 10-25-01 Recording	No Objection
364	Audio Tape of 10-27-01 Recording	No Objection
364A	Transcript of 10-27-01 Recording	No Objection
365	Audio Tape of 11-03-01 Recording	No Objection
365A	Transcript of 11-03-01 Recording	No Objection
366	Audio Tape of 11-08-01 Recording	No Objection
366A	Transcript of 11-08-01 Recording	No Objection
367	Audio Tape of 11-10-01 Recording	No Objection
367A	Transcript of 11-10-01 Recording	No Objection
368	Audio Tape of 11-11-01 Recording	No Objection
368A	Transcript of 11-11-01 Recording	No Objection
369	Audio Tape of 11-15-01 Recording	No Objection
369A	Transcript of 11-15-01 Recording	No Objection
370	Audio Tape of 11-17-01 Recording	No Objection
370A	Transcript of 11-17-01 Recording	No Objection
371	Audio Tape of 11-22-01 Recording	No Objection
371A	Transcript of 11-22-01 Recording	No Objection
372	Audio Tape of 11-24-01Recording	No Objection
372A	Transcript of 11-24-01 Recording	No Objection
373	Audio Tape of 11-24-01Recording	No Objection
373A	Transcript of 11-24-01 Recording	No Objection
374	Audio Tape of 11-25-01 Recording	No Objection
374A	Transcript of 11-25-01 Recording	No Objection
375	Audio Tape of 11-29-01Recording	No Objection
375A	Transcript of 11-29-01 Recording	No Objection
376	Audio Tape of 12-01-01Recording	No Objection
376A	Transcript of 12-01-01 Recording	No Objection
377	Audio Tape of 12-02-01Recording	No Objection
377A	Transcript of 12-02-01 Recording	No Objection
379	Audio Tape of 12-06-01Recording	No Objection
379A	Transcript of 12-06-01 Recording	No Objection
380	Audio Tape of 12-08-01Recording	No Objection
380A	Transcript of 12-08-01 Recording	No Objection
381	Audio Tape of 12-08-01Recording	No Objection
381A	Transcript of 12-08-01 Recording	No Objection
340	Photographic Line-Up - Frank Reynolds	Not introduced
350	Consent to Search - Wirt Street - Shelia Fields	No Objection
351	(2) two cotton tipped swabs	No Objection
352	Search Warrant for Oral Swabs and Photographs	Withdrawn
385	Swabs	No Objection
386	Swabs	No Objection
387	Swabs	No Objection
388	Swabs	No Objection
389	Swabs	No Objection
390	Gerardi - Cutting	No Objection
391	Envelope Containing Jackson Prints	No Objection
391A	Jackson Prints	No Objection
392	Photograph - Lifts	No Objection
393	Photograph - Lifts	No Objection
394	Envelope Containing 2 Photos	No Objection

395	Envelope Containing Lift Sheets	No Objection
395A	Lift Sheets	No Objection
395B	Lift Sheets	No Objection
396	Walmart Receipt	No objection
397	Audio Tape of Excerpts	withdrawn
397A	Transcript of Audio Tape Excerpts	withdrawn
398	Preston Automobile Service Records Red Chrysler	No objection
398 A-P	Preston Automobile Service Records Red Chrysler	No objection
399	Preston Automobile Service Records Silver Chrysler	No objection
399 A-J	Preston Automobile Service Records Silver Chrysler	No objection
400	Trumbull County Recorder 101 Olive Street	Admitted over Obj
400 A-C	Trumbull County Recorder 101 Olive Street	Admitted over Obj
401	Trumbull County Recorder Washington Street	Admitted over Obj
401 A-B	Trumbull County Recorder Washington Street	Admitted over Obj
402	Trumbull County Recorder Fonderlao	Admitted over Obj
402 A-F	Trumbull County Recorder Fonderlao	Admitted over Obj
403A	Defendant's school records	No Objection
Defendant's Exhibits		
Def A	Def's Criminal History	No Objection
Def B	Contains 9 subparts of Blood Swabs	No Objection
Def C	Credit Application	No Objection
Def D	DMV Registration Card	No Objection
Def E	Sales Agreement	No Objection
Def F	Lease Agreement	No Objection
Def G	Car Registration	No Objection
Def H	Credit Application	No Objection
Def I	DMV Registration Card	No Objection
Def J	Real Estate Records	No Objection
Def K	Real Estate Records	No Objection
Def L	Real Estate Records	No Objection
Def M	Psychological Report	No Objection
Def N	Fingerprint Jewelry	No Objection
Court Exhibit 1	Orientation Instructions	
Court Exhibit 2	Exhibit List	
Court Exhibit 3	Brief in Opposition to Acquittal	
Court Exhibit 4	Jury Charge	
Court Exhibit 5	Corrected Instruction	
Court Exhibit 6	Jury Question	
Court Exhibit 7	Penalty Instruction	

DEFENDANT'S EXHIBITS

- | | |
|---------------------------|--------------|
| 1. Photo | No objection |
| 2. Photo | No objection |
| 3. Photo | No objection |
| 4. Photo | No objection |
| 5. Consent to Search form | No objection |
| 6. Consent to Search form | No objection |
| A. Yellow shirt | |

JOINT EXHIBIT NO. 1 Photos

COURT'S EXHIBITS:

- 1. Jury verdict form
- 1A. Court's answer to jury question
- 2. Jury questions
- 2A. Court's answer to jury question
- 3. Jury question
- 3A. Court's answer to jury question
- 4. Jury question
- 4A. Court's answer to jury question
- 5. Jury question

SENTENCING EXHIBIT "A" (sealed by the Court)

1
FILED
COURT OF COMMON PLEAS

SEP 15 2014

TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,
Plaintiff

) Case No. 2001-CR-793

-vs-

) Judge Ronald J. Rice

DONNA M. ROBERTS,
Defendant

) TRANSCRIPT OF PROCEEDINGS

Resentencing Hearing held on April 30, 2014

BEFORE: HONORABLE RONALD J. RICE

AT: Trumbull Co. Court of Common Pleas
161 High Street, NW
Warren, Ohio 44481

APPEARANCES:

On behalf of the Plaintiff:

Mr. Christopher D. Becker and Ms. Luwayne Annos
Attorneys at Law

On behalf of the Defendant:

Messrs. David L. Doughten and Robert A. Dixon,
Attorneys at Law

Official Court Reporter: Richelle J. Guerrieri

1 THE COURT: Good morning, Ladies and
2 Gentlemen. We're here on, this is Case No. 2001-CR-793, State
3 of Ohio versus Donna Marie Roberts.

4 Counsel, would you identify yourselves for
5 the record, please?

6 MS. ANNOS: On behalf of the State of Ohio,
7 Luwyane Annos.

8 MR. BECKER: Chris Becker for the State of
9 Ohio, Your Honor.

10 MR. DOUGHTEN: On behalf of Donna Roberts,
11 David Doughten.

12 MR. DIXON: On behalf of Donna Roberts,
13 Robert Dixon.

14 THE COURT: Thank you. We're here this
15 morning on a -- there was a motion filed by the defense
16 contesting the Court's holding the hearing. We also, like I
17 said, have another matter. We had a request for continuance
18 filed which I guess --

19 MR. DOUGHTEN: Yes, Your Honor. I can
20 address the continuance. I received a call from Donna's case
21 manager, I believe it was last Thursday, indicating that they
22 thought that would be -- she was having medical difficulties
23 and treatment. I did send something down, releases were

1 granted. I did hear from the institution. A Melissa Hall had
2 faxed me back and indicated to me that in fact she was stable
3 enough that she could be transferred at this time. And it was
4 at that point I called the Court and indicated that I had
5 received confirmation that she was medically able to come and
6 we would withdraw our Motion to Continue.

7 THE COURT: Thank you. We did receive a
8 letter directly from Miss Roberts requesting not to be here.
9 She is present, so I guess that request is moot at this time.
10 But I think we have a copy of that which we will provide to
11 you.

12 Well, counselor, as to your motion, do you
13 wish to address the Court on the motion that you filed?

14 MR. DOUGHTEN: Yes, Your Honor. I
15 understand that whatever which way this Court decides it's
16 going to be decided by the Supreme Court. But this is a
17 unique scenario. We'll rest on the briefing except to say
18 that the difficulty of this case is they're, they're putting
19 you in an impossible task. They're asking you to weigh not
20 only the mitigation, but also the aggravation, and you weren't
21 privy. And I know the Court has reviewed all the record, but
22 it's, it's different than actually hearing the intonation,
23 seeing the facial expressions, the pauses, et cetera, et

1 cetera.

2 And our position is that the Ohio statute
3 does not allow for the proceeding as ordered by the Supreme
4 Court. Now obviously it's the Supreme Court's order, but
5 we're going to ask them to take a look at that. Thank you,
6 Your Honor.

7 THE COURT: State wish to address the
8 motion?

9 MS. ANNOS: Your Honor, the opinion from
10 the Ohio Supreme Court makes it clear that this Court is only
11 to engage in a sentencing exercise today, that no further
12 testimony is to be taken, no further evidence is to be taken.

13 And while the situation is one in which
14 another Judge did in fact hear the case and was able, as
15 Mr. Doughten said, to see the witnesses or Miss Roberts in
16 person, the fact is, there is an extensive record in this case
17 that is available for review, which the Supreme Court was well
18 aware of when they ruled as they did in this matter. So we
19 ask that this motion be denied.

20 THE COURT: Thank you. The Court will -- I
21 have read the motion. I'm going to read that again. I have
22 started an entry. I'll prepare an entry, address that first
23 thing at 2:00 o'clock and proceed straight to sentencing at

1 2:00. Anything else?

2 MR. DOUGHTEN: Nothing else at this time,
3 Your Honor.

4 THE COURT: Counsel, you can stay with your
5 client as long as you need to. We'll see you back here at
6 2:00 o'clock.

7 MR. BECKER: Thank you, Your Honor.

8 MR. DOUGHTEN: Thank you, Your Honor.

9 THE COURT: One other thing. We've got
10 some directions from the Court as to -- there's not a whole
11 lot of participation in the process, but it is a sentencing,
12 so I do intend to give both sides an opportunity to speak as
13 far as counsel, ask if the hearing can go forward, anything
14 Miss Roberts would like to say. I know it's not supposed to
15 be another allocution but it is a sentencing.

16 And I'm assuming we still have to give
17 post-release control notifications, court costs and everything
18 else at a normal sentencing. They didn't address that but I'm
19 assuming we have to do that; correct? As silly as I
20 personally feel about post-release control, we still have to
21 go through all those other notifications; correct?

22 MS. ANNOS: Yes. That was not in the entry
23 for 2007. I would agree with Your Honor.

1 THE COURT: I guess on the side of caution
2 we'll go through it anyway, no matter how futile it is, but
3 we'll go through it anyway.

4 MR. DOUGHTEN: I would agree. In fact, one
5 of the points that we are going to address is her indigent
6 status and costs. The last time she was brought up here they
7 gave her a bill for \$250. We're going to ask to address that.
8 So I guess I would state, I'd rather there be an abundance of
9 caution.

10 THE COURT: Fair enough. See you at 2:00
11 o'clock.

12 (Whereupon, recess was taken.)

13 THE COURT: We're back on the record in
14 Case No. 2001-CR-793, State of Ohio versus Donna Marie
15 Roberts. Counsel, first I'm going to address the motion
16 filed, Motion to Preclude a Sentence of Death or, in the
17 Alternative, Order a Full Penalty Phase Hearing, filed by the
18 Defendant, Donna Marie Roberts. The Court has reviewed the
19 motion, memoranda, pleadings. In addition, the Court heard
20 some brief arguments this morning on the motion.

21 This matter is before the Court on remand
22 from the Supreme Court of Ohio with specific instructions to
23 consider all the mitigating evidence reflected in the record,

1 including Roberts's allocution, weigh the aggravating
2 circumstances against the mitigating factors, and file a
3 sentencing opinion that reflects that it has complied with
4 these instructions. In doing so, the trial court must make an
5 independent determination of whether a death sentence is
6 appropriate and may not give deference to the sentences
7 previously entered.

8 Roberts claims the failure to conduct a
9 completely new sentencing hearing, including the empaneling of
10 a new jury for the mitigation penalty phase, violates the
11 Fifth, Sixth, Eighth and Fourteenth Amendments of the United
12 States Constitution. Although the Court recognizes the unique
13 position of this Court as a sentencing authority without
14 first-hand knowledge of the events in the original mitigation,
15 penalty phase and the remand following *Roberts I*, the Court
16 must also be cognizant of its position in relation to the
17 directive issued by the Supreme Court of Ohio in *Roberts II*.
18 In addition, the Court has fully complied with the upper
19 Court's directive and has conducted a thorough review of the
20 records, including but not limited to transcripts of all
21 proceedings, the pleadings, judgment entries and exhibits.

22 Further, *Roberts II* already considered and
23 rejected the arguments set forth by Roberts in the pending

1 motion. In a case in which the Defendant was not deprived of
2 any constitutional rights, including her Eighth Amendment
3 right to present mitigation at the time of her mitigation
4 hearing, there seems to be no basis for requiring the trial
5 court to reopen or supplement that evidence in a later
6 proceeding. To hold, as Coyle does, that a new mitigation
7 hearing must be held, even though no constitutional error
8 infected the original one, would transform the right to
9 present relevant mitigation into a right to update one's
10 mitigation. Such a right has no clear basis in *Lockett* or its
11 progeny as set forth in *Roberts II*.

12 The Court finds *Roberts II* considered and
13 rejected Roberts's arguments regarding the presentation of any
14 additional evidence at this phase of the proceedings. As
15 stated in *Roberts II*, the correct procedure is to proceed on
16 remand from the point at which the error occurred. Therefore,
17 the Court finds Roberts's Motion to Preclude a Sentence of
18 Death, or in the Alternative, Order a Full Penalty Phase
19 Hearing, is hereby denied. I will provide you, counsel, with
20 a copy of that.

21 MR. DOUGHTEN: Thank you.

22 THE COURT: Are the parties ready to
23 proceed with the sentencing?

1 MR. BECKER: Yes, Your Honor.

2 MS. ANNOS: Yes, Your Honor.

3 MR. DOUGHTEN: Yes, Your Honor.

4 THE COURT: This is kind of a unique
5 situation. At a sentencing hearing, both sides are given an
6 opportunity to present some evidence and make statements.
7 Pursuant to Supreme Court guidelines, there won't be any
8 additional evidence permitted or any statements to be made.

9 Miss Roberts, I understand you have some
10 health issues. Would you like to stay seated through the
11 sentencing hearing?

12 THE DEFENDANT: Yes. Thank you.

13 THE COURT: Counsel, I have a notice of
14 post-release control, if you will take a minute and review
15 that with your client.

16 Miss Roberts, the Court is notifying you,
17 pursuant to Ohio Revised Code Sections 2929.19, 2943.032 and
18 2967.28 as to Count 1 on your previous conviction of
19 Complicity to Commit Aggravated Murder, should you ever be
20 released from prison you will be subject to a life time of
21 parole supervision. If you violate any of the conditions of
22 your parole, then you would be forced to serve the balance of
23 any suspended life sentence.

1 As to Count 3, Complicity to Commit
2 Aggravated Burglary, and Count 4, Complicity to Commit
3 Aggravated Robbery, you will be subject to a mandatory period
4 of five years of post-release control upon your being released
5 from prison.

6 If you were to violate any of the
7 conditions of a post-release control sanction imposed upon you
8 by the parole board upon the completion of any stated prison
9 term, the parole board may impose upon you as the offender a
10 residential sanction that includes a new prison term of up to
11 nine months for each violation of the rules, not to exceed
12 one-half of your stated prison term.

13 If while on post-release control you are
14 convicted of a new felony offense, in addition to being
15 punished for the underlying conduct, the new offense, an
16 additional prison term of one year or what time remains on
17 your post-release control term may be added as an additional
18 or consecutive penalty.

19 You will not be allowed to ingest or be
20 injected with any drug of abuse, subject to random screening
21 while on post-release control.

22 Ma'am, I have before me a Notice of
23 Post-Release Control. There's a signature above your name; is

1 that your signature?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Thank you. You may be entitled
4 to earn one or five days of credit for each completed month
5 during which you productively participate in an education
6 program, vocational training, employment in prison industries,
7 treatment for substance abuse or any other constructive
8 program developed by the Ohio Department of Corrections.
9 However, those credits are not automatically awarded but must
10 be earned.

11 Pursuant to the Ohio Revised Code, the cost
12 of the prosecution as well as jury fees must be assessed to
13 you. If you fail to pay those costs or fail to make timely
14 payments toward those costs under a schedule approved by the
15 Court, you could be ordered to perform community service work
16 until such time as the costs are paid in full or until you are
17 in compliance with an approved schedule approved by the Court.
18 You will receive credit against any judgment for costs at the
19 hourly minimum-wage rate for the services performed.

20 Counsel, it's my understanding in chambers
21 you had a question as to cost?

22 MR. DOUGHTEN: Yes, Your Honor.

23 Miss Roberts has been on death row for well over a decade.

1 She has no source of income. We ask the Court to waive costs.

2 THE COURT: All right. Any objection from
3 the State?

4 MR. DOUGHTEN: If I could add, when she was
5 brought back for sentencing here the last time, not part of
6 the trial, the resentencing, she was -- additional costs were
7 put on at that time. And if they're not waived at this point,
8 even though she did not want to be here, as the Court is
9 aware, but she was obligated to be, again, costs would be
10 assessed to her which makes it more difficult, a difficult
11 situation she's in even more difficult.

12 MR. BECKER: Can we approach briefly?

13 THE COURT: Sure.

14 (Whereupon, a discussion was held off the
15 record.)

16 THE COURT: No objection by the State?

17 MR. BECKER: That's correct, Your Honor.

18 THE COURT: Counsel, I'm not sure whether
19 there is an appropriate Affidavit of Indigency. I thought I
20 did see one but I might be mistaken. So the Court will waive
21 those upon the filing of an appropriate affidavit.

22 MR. DOUGHTEN: Thank you very much, Your
23 Honor.

1 THE COURT: This matter was remanded by the
2 Supreme Court of Ohio with the following instruction. "On
3 remand, the trial court must consider all the mitigating
4 evidence reflected in the record, including Roberts's
5 allocution, weigh the aggravating circumstances against the
6 mitigating factors, and file a sentencing opinion that
7 reflects that it has complied with these instructions. In
8 doing so, the trial court must make an independent
9 determination of whether a death sentence is appropriate and
10 may not give deference to the sentences previously entered."

11 Pursuant to the remand of this matter from
12 the Supreme Court of Ohio, the Court has carefully read,
13 reviewed, examined and/or inspected the entire court record,
14 all of the transcripts from the pre-trial and post-trial,
15 exhibits, pleadings, including but not limited to the
16 following items: The indictment of the Trumbull County Grand
17 Jury; all of the docket entries filed in this matter; all of
18 the notes entered by the staff as to scheduling matters; the
19 prior court scheduling of 29 events, including status
20 hearings, hearings, pre-trials; motions to suppress; the jury
21 trial, sentencing and re-sentencing hearings; all the
22 pleadings as filed by the State of Ohio and various counsel
23 for the Defendant; the transcript of the Motion to Suppress

1 held on February 3rd, 2002; Transcripts of Proceedings,
2 Volumes 1 through 23 of individual and group voir dire
3 questioning and juror selection; all of the exhibits admitted
4 at the trial as listed and attached to this entry on a
5 document titled List of Trial Exhibits And Mitigation Hearing
6 Exhibits; the entire trial and sentencing record; the entire
7 record following the remand from *Roberts I*.

8 In accordance with *Roberts II*, the Court
9 did not permit Roberts to update her mitigation at the hearing
10 following the recent remand. Establishing a right to update
11 mitigation, as stated earlier, could result in arbitrary
12 distinctions between similarly situated capital defendants.
13 Roberts expressly and validly waived her right to present
14 mitigating evidence during the original sentencing phase.

15 The Court notes this matter is now before a
16 different judge, as Judge John M. Stuard has since retired
17 from the bench and shortly thereafter passed away. As
18 instructed, the Court has not given any deference to the prior
19 decisions of Judge Stuard in this matter. However, the Court
20 notes, the Court notes the acknowledgement as recognized in
21 *Roberts II* that the trial court then stated it had considered
22 the record and the oral statements. Beyond this, however, the
23 opinion does not discuss Roberts's allocution. The Court

1 notes with confidence and respect for Judge Stuard, he would
2 not have acknowledged consideration of the oral statements,
3 including the allocution, had he not, in fact, considered the
4 same. Such was his nature of fairness. Nevertheless, as
5 previously indicated, the Court has given no deference to the
6 prior decisions of Judge Stuard and has complied with the
7 remand instructions as directed.

8 Despite the fact that Roberts expressly
9 waived mitigation, Roberts took advantage of her opportunity
10 for allocution at the original sentencing and again following
11 the *Roberts I* remand. Roberts explained in her original
12 allocution she had no intention of offering mitigating factors
13 for consideration. Rather, she advised she chose allocution
14 because it was against her religion to take an oath.

15 Roberts's allocution centered on two
16 salient points. First, she pointed out inconsistencies in the
17 evidence and testimony as she perceived. Second, she drew
18 attention to the differences between her trial and the trial
19 of Nathaniel Jackson, claiming racial inequities.

20 Roberts accurately characterized in her
21 allocution that the jury had been exposed to five percent of
22 her life. That five percent included her relationship with
23 Jackson. As she stated, "The other 95 percent of my life was

1 dedicated to my husband, my son, my family and business, and
2 doing charity for the unfortunate to share the good fortune
3 that God bestowed upon me and my loved ones." This Court
4 finds this is the most truthful and yet, unfortunate,
5 statement in the Defendant's entire allocution. Five percent
6 comprised of bad decisions has such a profound effect on a
7 lifetime.

8 Roberts brought attention to the fact that
9 the personnel in the courtroom were white. She likewise
10 opined on inaccurate portrayals in the newspaper regarding the
11 facts of this case.

12 Roberts explained she did not consider the
13 jury to be a jury of her peers. She provided some details
14 regarding her life. She worked for a plastic surgeon for
15 25 years. She lived in Miami for 27 years. She traveled the
16 world. Roberts expressed concern that some of the jurors
17 indicated that they did not read any newspapers or watch the
18 news. She also expressed concern regarding the young age of a
19 few of the jurors, citing their lack of life experiences as a
20 hindrance to their ability to judge the case.

21 Next, Roberts recounted certain aspects
22 regarding the prosecution against Nathaniel Jackson. Roberts
23 pointed out her perceived inconsistencies in the Jackson trial

1 compared to the prosecution by the State in her case. She
2 also alleged racial bias on behalf of the prosecution.

3 Roberts relayed her opinion on Howland
4 Chief of Police Paul Monroe and his role in this matter prior
5 to holding that position. She claimed Monroe intentionally
6 informed the jury she was Jewish in an effort to sway the
7 jurors against her even more. Roberts used her opportunity at
8 the allocution to chastise the jurors for becoming too
9 involved in the operatic drama of the prison letters and
10 communications than the truth.

11 Roberts reviewed the testimony regarding
12 the life insurance policies. She claimed she had no knowledge
13 the victim -- she had no knowledge the victim had increased
14 the value his life insurance policies. She also reviewed her
15 financial history and business investments. Roberts pointed
16 out she was earning \$200,000 annually and the insurance policy
17 of \$250,000 was not enough to seduce her to murder
18 Mr. Fingerhut.

19 Roberts added personal details about her
20 life with the victim by describing their daily rituals with
21 their beloved pets. She discussed the victim's family life
22 and relationships with his sons from a previous relationship.
23 She insisted she did not want any more money from Mr.

1 Fingerhut and relayed the fact that she signed over any life
2 insurance policies to his children.

3 Next, Roberts spoke regarding Santiago
4 Mason. She explained that Mason sued her for framing him.
5 She protested his characterization and explained why that was
6 not true. She described the victim's sports memorabilia
7 collection. She also attacked Mason's character.

8 Roberts disputed certain elements of the
9 State's case. Namely, she challenged the eye witness from her
10 neighborhood who saw her driving in the area. She questioned
11 the time frame against the witness's statement and her own
12 activities during the relevant period of time on the night of
13 the murder. She also challenged the testimony of Frank
14 Reynolds. She pointed out inconsistencies in Reynolds'
15 testimony with the facts of her life. She contradicted the
16 testimony of Reynolds regarding her argument over money with
17 the victim. She was incensed that Reynolds would advise the
18 jury she was upset with Mr. Fingerhut because he would not
19 give her money. She was adamant she did not need any money
20 from Mr. Fingerhut.

21 Roberts also challenged the physical
22 evidence of the prosecution. She discussed the bloody
23 washcloth found at the Days Inn. She claimed the washcloth

1 and towel were purposefully placed there by the police. She
2 also attacked the validity of other evidence recovered from
3 the hotel and the surrounding area.

4 Roberts questioned the introduction of
5 certain sexual information about her by the State as
6 inappropriate. She claimed it was only meant to influence the
7 jury into forming a low opinion of her. She also challenged
8 the search of the residence as improper.

9 In addition, Roberts claimed the marijuana
10 found at the residence did not belong to her. She maintained
11 it was also fabricated by the police. However, she admitted
12 to smoking marijuana on a regular basis.

13 Roberts discussed the letters between her
14 and Jackson as well as the taped telephone conversations while
15 Jackson was incarcerated. She alleged the State manipulated
16 those conversations to fit their case by not admitting the
17 entire transcript of the conversations, only limited portions.

18 With gratitude, she acknowledged her
19 attorneys. She described when and where she acquired the
20 weapons found at the home. She explained the events when
21 Mason allegedly stole her gun. Roberts also reviewed the
22 coroner's report.

23 Roberts described her reaction to finding

1 the victim on the night in question. She then relayed her
2 version of the Jackson case running parallel to her
3 prosecution. She challenged the veracity of the location of
4 the murder weapon in the reports. According to the Defendant,
5 the police moved the gun.

6 Finally, Roberts closed her allocution by
7 advising the jury they are required to recommend a death
8 sentence since she presented no mitigating evidence. She
9 pleaded for equal treatment and a sentence equal to that of
10 Jackson's. However, Roberts reiterated this was not an
11 admission of guilt. Rather, she claimed her plea was one of
12 social justice and equality. She pledged her love for the
13 victim and ended her allocution with the instruction for the
14 jury to do what is right.

15 At the resentencing hearing following
16 *Roberts I*, Roberts again offered allocution to the Court. On
17 October 22nd, 2007, Roberts indicated the record had been "a
18 big misrepresentation about me, my character, my personality
19 and my life." Roberts proceeded to provide additional
20 information relative to her personal history.

21 Roberts explained she grew up on a farm in
22 Austintown, Ohio. She attended a Roman Catholic elementary
23 school. She recounted that she was sexually abused by an

1 older cousin when she was very young. She described her
2 household as very, very abusive.

3 Roberts recalled her father abused her
4 mother physically and verbally. Roberts stated she "spent a
5 lot of time under my bed, especially when the guns came out."
6 When Roberts was taken to a doctor, she described being taken
7 into a room alone with a male doctor and afterward he advised
8 her mother she was a bad girl. According to Roberts, she was
9 always sad and "felt empty because nobody had ever paid
10 attention to me or hugged me or anything."

11 Despite this sadness, Roberts achieved good
12 grades and rewards in school. She was on the honor roll and
13 dean's list later in college. She received accolades as a
14 writer. She married her high-school sweetheart and moved to
15 Miami, Florida. She described having her son and acknowledged
16 his many accomplishments.

17 Roberts was involved in a car accident in
18 1963. She "fell asleep and the car went through big giant
19 trees, hitting something." She recalled she was filled with
20 glass from the debris. Roberts described herself as spacey
21 for awhile after the accident.

22 In 1983, Roberts was again involved in a
23 car accident. She flew through the windshield and experienced

1 numbness in her extremities after the accident. Roberts was
2 treated by a neurosurgeon for some time after this.

3 In 1999, Roberts again fell asleep behind
4 the wheel and was involved in a car accident. Roberts
5 recalled months after this event where she has no memory.
6 Roberts stated, "Robert was calling me spacey and goofy, and
7 he was really worried about me, and he told me I should get
8 some kind of help, but I didn't want any help." Roberts
9 acknowledged she ignored the depression.

10 Roberts recounted a suicide attempt wherein
11 she started her car in the garage with her dog, Blossom. She
12 stated Blossom alerted her by pawing at her arm and she called
13 for help. Roberts was hospitalized after this event in a
14 psychiatric ward. Following this hospitalization, Roberts
15 sought Social Security disability.

16 Roberts explained she was prescribed three
17 or four medications at that time. One medication was to stop
18 the voices. Roberts experienced some hallucinations while
19 incarcerated. She described seeing giant anthills on her
20 floor. Roberts also described falling and hitting her head on
21 multiple occasions after this event. Roberts described
22 periods of time when she could not identify the day of the
23 week.

1 Roberts explained she walked away from the
2 restaurant she owned one day because she became overwhelmed.
3 She left the refrigerator and freezers full and never
4 returned.

5 Roberts described her life working with a
6 plastic surgeon. She described helping people with
7 reconstructive surgery. Roberts remembered how she used to
8 help people pay their checks at the restaurant when they
9 didn't have enough money.

10 Roberts converted to Judaism in 1980. She
11 explained her involvement in a Jewish burial society and the
12 customs therewith. She proudly expressed her involvement in a
13 campaign to rescue a Jewish man from persecution in Ethiopia.
14 She also volunteered in Israel with the plastic surgeons
15 performing skin grafts.

16 In contrast, Roberts explained the
17 inaccuracies in the record describing Mr. Fingerhut as the
18 entrepreneur. Roberts claimed she was the businesswoman.
19 They divorced to protect her assets; not his. She took out
20 \$75,000 from her mutual fund for a down payment on her dream
21 house. She described herself as the breadwinner.
22 Mr. Fingerhut only worked occasionally, according to Roberts.
23 Roberts espoused her talents in trading on the stock market

1 and investing in real estate.

2 Roberts was fixated on ensuring the Court
3 was aware of her affluence. She was proud of the fact that
4 she had money and wore expensive clothes. She again chastised
5 Frank Reynolds for his testimony that she and Mr. Fingerhut
6 had an argument because he wouldn't give her \$3,000. Roberts
7 stated, "The accounts were mine. The house was mine. The
8 only way we had three cars is on my credit." She spoke
9 regarding her gifts of money to her son and her sister.

10 Roberts closed her allocution with the
11 following words: "I never intended for anything like that to
12 happen, and I couldn't believe it, and I still can't believe
13 it. We loved each other and we had a good life."

14 Revised Code 2929.04(A) sets forth the
15 applicable aggravating circumstance enabling a consideration
16 of the death penalty to be specified in the indictment and
17 proven beyond a reasonable doubt in this case. In Section 7,
18 "the offense was committed while the offender was committing,
19 attempting to commit, or fleeing immediately after committing
20 or attempting to commit kidnapping, rape, aggravated arson,
21 aggravated robbery or aggravated burglary, and either the
22 offender was the principal offender in the commission of the
23 aggravated murder or, if not the principal offender, committed

1 the aggravated murder with prior calculation and design."

2 On May 28th, 2003, Roberts was found guilty
3 following a trial before a petit jury and after due
4 deliberation by said jury of the following: Count One:
5 Complicity to Commit Aggravated Murder in violation of Revised
6 Code Section 2923.03(A) (2), 2903.01(A) and 2941.14(C) of
7 Robert S. Fingerhut, with two separate Specifications of
8 Aggravating Circumstances; to wit, Specification Number one:
9 Aggravated Burglary in violation of Revised Code Section
10 2929.04(A) (7) and Specification Number Two: Aggravated
11 Robbery in violation of R.C. Section 2929.04(A) (7); Count Two:
12 Complicity to Commit Aggravated Murder in violation of Revised
13 Code 2923.03(A) (2), 2903.01(B) and 2941.14(C) of Robert S.
14 Fingerhut, with two separate Specifications of Aggravating
15 Circumstances, to wit: Specification Number One. Aggravated
16 Burglary in violation of Ohio Revised Code 2929.04(A) (7) and
17 Specification Number Two: Aggravated Robbery in violation
18 Ohio Revised Code 2929.04(A) (7); Count Three: Complicity to
19 Commit Aggravated Burglary with a Firearm Specification in
20 violation of Revised Code Section 2923.03(A) (2),
21 2911.11(A) (1) (2) and 2941.145; and Count Four: Complicity to
22 Commit Aggravated Robbery with a Firearm Specification in
23 violation of Ohio Revised Code Section 2923.03(A) (2),

1 2911.01(A) (1) (3) and 2941.145. Count Two was removed from the
2 Jury pursuant to a Motion to Dismiss by the State.

3 The Court finds the aggravating
4 circumstances were set forth in the indictment of Roberts.
5 The Court further finds these elements of the aggravating
6 circumstances were proven beyond a reasonable doubt in the
7 trial of this matter. The Court finds Roberts acted with
8 prior calculation and design in the aggravated murder of the
9 victim, Mr. Fingerhut.

10 The Court finds Roberts acted with prior
11 calculation and design in the aggravated murder of Fingerhut
12 while committing or attempting to commit aggravated burglary.
13 It was proved beyond a reasonable doubt at trial that Roberts
14 provided access to Jackson to trespass in Fingerhut's
15 residence at 254 Fonderlac Drive, Howland Township, Trumbull
16 County, Ohio with the specific purpose of killing Fingerhut
17 with prior calculation and design. It was further proven
18 beyond a reasonable doubt that the tools used to carry out
19 this plot were provided by Roberts: the gloves, ski mask,
20 firearm, as well as the access to the residence. Countless
21 recorded telephone calls and written letters outlined this
22 plan to murder Mr. Fingerhut in this manner leaving no
23 reasonable doubt whatsoever.

1 The Court finds Roberts acted with prior
2 calculation and design in the aggravated murder of Fingerhut
3 while committing or attempting to commit aggravated robbery.
4 It was proven beyond a reasonable doubt at trial that Roberts
5 acted with prior calculation and design. Roberts intended for
6 Jackson to steal Mr. Fingerhut's vehicle, originally to use
7 the car as a means for kidnapping Fingerhut away from the
8 residence to kill him off site. The police recovered Mr.
9 Fingerhut's vehicle a few blocks from where Jackson was
10 arrested. The keys were still in the ignition.

11 The Court finds beyond a reasonable doubt
12 Roberts acted with complicity to commit aggravated murder
13 while committing or attempting to commit or in fleeing
14 immediately after committing or attempting to commit
15 aggravated burglary. The Court finds beyond a reasonable
16 doubt Roberts acted with complicity to commit aggravated
17 murder while committing or attempting to commit or in fleeing
18 immediately after committing or attempting to commit
19 aggravated robbery. The Court further finds beyond a
20 reasonable doubt Roberts acted with complicity to commit
21 aggravated murder with prior calculation and design.

22 Having found the aggravating circumstances
23 proven beyond a reasonable doubt, the Court must now weigh

1 against the aggravating circumstances proved beyond a
2 reasonable doubt, the nature and circumstances of the offense,
3 the history, character, and background of the offender along
4 with the additional statutory factors set forth in the Revised
5 Code Section 2929.04(B) as mitigating factors.

6 Pursuant to Revised Code 2929.03(F), the
7 Court makes the following findings regarding the factors
8 listed in Revised Code Section 2929.04(B): "One, whether the
9 victim of the offense induced or facilitated it."

10 The Court finds Mr. Fingerhut, the victim
11 in this matter, did nothing to facilitate or induce his own
12 death. The Court gives no weight to the allegations made by
13 Roberts in her letters to Jackson regarding the physical abuse
14 she suffered at the hand of Mr. Fingerhut. Even if the Court
15 were to accept those claims as true, there is no evidence of
16 any imminent threat to Roberts. Likewise, there is no
17 evidence Roberts was prevented from evading the abusive
18 situation by alternate means such as leaving the residence or
19 filing a complaint with the police department.

20 "Whether it was -- it is unlikely that the
21 offense would have been committed, but for the fact that the
22 offender was under duress, coercion or strong provocation,"
23 the Court finds there is no evidence before the Court that

1 Roberts was under any duress, coercion or strong provocation
2 to commit the crime.

3 "Three. Whether, at the time of committing
4 the offense, the offender, because of a mental disease or
5 defect, lacked substantial capacity to appreciate the
6 criminality of the offender's conduct or to conform the
7 offender's conduct to the requirement of the law."

8 The Court finds there is no evidence to
9 suggest Roberts lacked substantial capacity to appreciate the
10 criminality of her conduct or to conform her conduct to the
11 rules of law. Although Roberts testified in her allocution
12 regarding the status of her mental health, the Court does not
13 find that statement contained any evidence to suggest or
14 support Roberts did not understand the criminality of her
15 conduct. The Court finds the incidents described by Roberts
16 in her allocution were either isolated events following
17 physical traumas associated with her motor vehicle accidents
18 or they occurred after the death of Mr. Fingerhut. There is
19 no evidence to suggest Roberts lacked mental capacity at the
20 time of the events in question.

21 "Four. The youth of the offender." The
22 Court finds the age of Roberts is not a factor for
23 consideration.

1 "Five. The offender's lack of a
2 significant history of prior criminal convictions and
3 delinquency adjudications." The Court finds Roberts does not
4 have a significant history of prior criminal convictions.
5 This factor does weigh in her favor.

6 "Six. If the offender was a participant in
7 the offense but not the principal offender, the degree of the
8 offender's participation in the offense and the degree of the
9 offender's participation in the acts that led to the death of
10 the victim."

11 The Court finds although Roberts was not
12 the triggerman, the evidence clearly demonstrated she
13 orchestrated the entire plot. The record reveals the
14 intentional acts of Roberts in planning the aggravated murder
15 of Mr. Fingerhut in exchange for his life insurance proceeds.
16 Roberts induced Jackson to be her accomplice with promises of
17 payment in the form of a Cadillac or Lincoln, a wealthy
18 lifestyle, vacations and a home in a desirable neighborhood.
19 Roberts premeditated for months. She checked the balance of
20 her life insurance proceeds. She arranged for Jackson's
21 transportation from prison to a hotel room where she fulfilled
22 his sexual needs, fed him food for sustenance, and provided
23 the necessary tools to carry out the murder. The Court finds

1 that Roberts was the primary mastermind behind Mr. Fingerhut's
2 murder. But for her premeditated calculations, Mr. Fingerhut
3 would not have been murdered by Jackson on that day.

4 "Seven. Any other factors that are
5 relevant to the issue of whether the offender should be
6 sentenced to death."

7 The Court finds there were several
8 mitigating elements presented in Roberts's allocution.
9 Certain elements of Roberts's allocution at the original
10 sentencing and again upon the earlier remand are worthy of
11 some discussion.

12 First, Roberts allegedly grew up in an
13 abusive household. She claimed she was witness to physical
14 confrontations between her mother and her father to the point
15 where she would hide under the bed when the guns came out.
16 This history, coupled with the alleged physical abuse between
17 Roberts and Fingerhut does weigh slightly in favor of Roberts.
18 Perhaps Roberts was still shouldering those childhood burdens
19 into adult life.

20 However, there is absolutely no evidence
21 before the Court to support the veracity of the physical abuse
22 allegations made by Roberts against Fingerhut. Therefore, the
23 Court is left to ponder whether those allegations were part of

1 her scheme to induce Jackson to act as her accomplice.
2 Roberts failed to alert the Court to any physical violence
3 between her and Fingerhut during her allocution. Instead,
4 Roberts professed her love for the man whom she contracted to
5 have killed. Therefore, the Court finds these facts weigh
6 only slightly in favor of Roberts.

7 Likewise, the Court gives little weight to
8 Roberts's allocution claims regarding the rape by her cousin
9 when she was very young. The Court finds this is entitled to
10 little weight as there is no direct connection to the
11 underlying crime. Even if Roberts were carrying the
12 psychological scars of this trauma, there is little or no
13 evidence to suggest any connection to the underlying crime.

14 The Court finds the charitable history of
15 Roberts is entitled to some mitigation weight in her favor.
16 Apparently, Roberts was quite generous with both her time and
17 funds. She assisted plastic surgeons performing
18 reconstructive surgery in Israel. She helped rescue a man
19 from persecution in Ethiopia. On a more day-to-day basis,
20 Roberts would help others in her family as well as strangers
21 who were struggling financially. However, the Court finds
22 this generosity must also be reviewed in totality with
23 Roberts's self-promotion. Roberts frequently referred to her

1 wealth in her allocution. She wanted the Court to know she
2 was the breadwinner, not Mr. Fingerhut. She berated the man
3 who testified she was angry with Mr. Fingerhut when he refused
4 to give her \$3,000. It seems these mischaracterizations of
5 her social status were more upsetting to Roberts than the
6 guilty verdict against her for complicity to commit murder.
7 The Court finds these two polar self-portraits are not
8 compatible with one another. Therefore, the Court affords no
9 weight to the self-reported acts of generosity and charity of
10 Roberts as mitigation.

11 The Court finds the reports of mental
12 instability and physical traumas following several car
13 accidents could be mitigating factors in Roberts's favor.
14 Roberts was involved in two motor vehicle accidents which
15 occurred after Roberts fell asleep behind the wheel. The mere
16 fact that one has not only a singular incident of this
17 magnitude, but two, leads the Court to question whether there
18 are other biological or physiological factors at play. In
19 addition, the mental status post-accidents and the lack of
20 memory for an extended period of time is likewise a mitigating
21 factor that weighs in favor of Roberts.

22 However, the Court finds the self-promotion
23 by Roberts as to her financial prowess, educational accolades

1 and charitable works is contradictory to her assertion that
2 she has suffered mental deficiencies as a result of the motor
3 vehicle accidents described above. The two are juxtaposed;
4 either Roberts is a powerful entrepreneur capable of earning a
5 magnitude of wealth and respect or she is one suffering from
6 mental trauma. The Court gives little to no weight to any
7 evidence of the latter. In addition, the Court finds Roberts
8 was fairly well-spoken in the delivery of her allocution.
9 Plus, Roberts expressly made a valid waiver of her right to
10 present mitigation evidence. There was no mental deficiency
11 at play in that decision.

12 There is no question Roberts suffered from
13 physical and mental traumas as a result of these accidents.
14 Roberts even attempted to commit suicide in her garage.
15 However, the Court finds these incidents are isolated and
16 occurred in a time frame so far removed from the murder of Mr.
17 Fingerhut that their relevance for mitigation is
18 significantly, significantly decreased. In addition, pursuant
19 to Revised Code 2929.04(B), the Court must also consider and
20 weigh the nature and circumstances of the offense, the
21 history, character and background of the offender. The Court
22 finds the history, character and background of Roberts have
23 been sufficiently addressed in the discussion specified in

1 Revised Code 2929.04(B) (1 through 7) already stated above.

2 Roberts planned and plotted for the murder
3 of Fingerhut over a period of at least three months. She
4 conspired with Jackson, her imprisoned lover, to murder
5 Fingerhut for his life insurance proceeds. The murder plan
6 was well documented through telephone calls recorded from
7 Jackson's residence; the Lorain Correctional Institute,
8 detailed letters were exchanged between the couple outlining
9 their plans. These plans included the acquisition of
10 supplies, the procurement of a hotel room, and the promise of
11 a new vehicle for Jackson -- all provided by Roberts.
12 Ultimately, Roberts provided access to the residence in order
13 for Jackson to carry out the murder as planned.

14 Despite these intricate details, Roberts
15 forgot to include Jackson as one of her named lovers to the
16 police during interviews. In addition, Roberts attempted to
17 thwart the investigation into the Fingerhut murder by
18 implicating other individuals; not Jackson. In addition,
19 Roberts's feigned emotional outbursts over Fingerhut's death
20 do not correlate to the insidious behavior relative to the
21 same.

22 Therefore, the Court has granted little to
23 no weight to any of the mitigating factors outlined by Roberts

1 in her allocution. In addition, the Court finds Roberts's
2 request for equal treatment to Jackson is inconsistent with
3 the primary body of her allocution and has not given any
4 weight to that request.

5 The presence of mitigating factors does not
6 preclude the imposition of a death sentence. Rather, those
7 mitigating factors are to then be weighed against the
8 aggravating circumstances of the crime. In conducting this
9 comparison, the Court overwhelmingly finds the aggravating
10 circumstances outweigh the mitigating factors.

11 The mitigating factors given little weight
12 by this Court do not even approach an imbalance of the
13 aggravating circumstances present in this matter. Roberts's
14 traumatic childhood, her allegations of physical abuse at the
15 hands of Fingerhut, the physical injuries sustained in
16 multiple motor vehicle accidents, the mental disability, the
17 lack of a prior criminal record and Roberts's charitable
18 tendencies do not even draw the Court's attention away from
19 the aggravating circumstances.

20 The Court has made a careful and
21 independent review of the entire record, including Roberts's
22 first and second allocutions. Upon this review, the Court
23 finds the aggravating circumstances outweigh the mitigating

1 factors by proof beyond a reasonable doubt.

2 Therefore, the Court hereby finds the
3 sentence of death is an appropriate penalty for the Defendant,
4 Donna Marie Roberts, in this matter.

5 The Defendant, Donna Marie Roberts, having
6 been indicted by the September 8th, 2001 term of the Grand
7 Jury of Trumbull County, Ohio for Count One: Aggravated Murder
8 in violation of Revised Code Section 2903.01(A) and 2941.14(C)
9 of Robert S. Fingerhut, with two separate Specifications of
10 Aggravating Circumstances to wit: Specification Number 1:
11 Aggravating Burglary in violation of Revised Code
12 2929.04(A) (7) and Specification Number 2: Aggravated Robbery
13 in violation of Revised Code 2929.04(A) (7); Count Two:
14 Aggravated Murder in violation of Revised Code 2903.01(B) and
15 2941.14(C) of Robert S. Fingerhut, with two separate
16 Specifications of Aggravating Circumstances, to wit:
17 Specification Number 1: Aggravated Burglary in violation of
18 Revised Code 2929.04(A) (7, and Specification Number 2:
19 Aggravated Robbery in violation of Revised Code 2929.04(A) (7);
20 Count Three: Aggravated Burglary with Firearm Specification
21 in violation of Revised Code 2911.11(A) (1) (2) and 2941.145;
22 and Count Four: Aggravated Robbery with Firearm Specification
23 in violation of Revised Code 2911.01(A) (1) (3) and 2941.145,

1 and on the 8th day of April, 2003, having been brought into
2 court for trial before a petit jury, being represented by
3 counsel, Attorney J. Gerald Ingram and Attorney John B.
4 Juhasz, and the jury having been empaneled and after due
5 deliberation on May 28, 2003, was found guilty of Count One:
6 Complicity to Commit Aggravated Murder in violation of Revised
7 Code 2923.03(A) (2), 2903.01(A) and 2941.14(C) of Robert S.
8 Fingerhut, with two separate Specifications of Aggravating
9 Circumstances, to wit: Specification Number 1: Aggravating
10 Burglary, in violation of Revised Code 2929.04(A) (7) and
11 Specification Number 2: Aggravated Robbery in violation of
12 Revised Code 2929.04(A) (7); Count Two, Complicity to Commit
13 Aggravated Murder in violation of Revised Code 2923.03(A) (2),
14 2903.01(B) and 2941.14(C) of Robert S. Fingerhut, with two
15 separate Specifications of Aggravating Circumstances, to wit:
16 Specification Number 1: Aggravated Burglary in violation of
17 Revised Code 2929.04(A) (7), and Specification Number 2:
18 Aggravated Robbery in violation of Revised Code 2929.04(A) (7);
19 and on Count Three, Complicity to Commit Aggravated Burglary
20 with a Firearm Specification in violation of Revised Code
21 2923.03(A) (2), 2911.11(A) (1) (2) and 2941.145. And Count
22 Four, Complicity to Commit Aggravated Robbery with a Firearm
23 Specification in violation of Revised Code 2923.03(A) (2),

1 2911.01(A) (1) (3) and 2941.145. Thereafter, Count Two was
2 removed from the Jury pursuant to a Motion to Dismiss by the
3 State.

4 On June 4, 2003, the Defendant, having been
5 brought into this Court to give evidence in mitigation on
6 Count One of the Indictment, and after arguments of counsel
7 and instructions of law, and after due deliberation, it was
8 the finding and recommendation of the Jury on June 4, 2003,
9 that the sentence of death be imposed on the Defendant.

10 On April 30th of this year, pursuant to a
11 remand from the Supreme Court of Ohio, the Defendant's
12 sentencing hearing was held pursuant to Revised Code 2929.19.
13 Attorney David L. Doughten and Attorney Robert A. Dixon were
14 present on behalf of -- as counsel for the Defendant, and
15 Assistant Prosecutor Christopher Becker was present for the
16 State. The Defendant was also present in Court and was
17 previously afforded all rights pursuant to remand from the
18 Supreme Court. The court has considered the record and oral
19 statements, as well as the principles and purposes of felony
20 sentencing under Revised Code 2929.11, and has balanced the
21 seriousness and recidivism factors of the Revised Code Section
22 2929.12.

23 Pursuant to law, the Court this day, April

1 30, 2014, having determined in a separate opinion of specific
2 findings that the aggravating circumstances as to the count of
3 Aggravated Murder outweigh the mitigating factors by proof
4 beyond a reasonable doubt, then made inquiry as to whether the
5 Defendant in answer -- any reason why we can't go forward with
6 the judgment today?

7 THE DEFENDANT: No.

8 THE COURT: The Court has considered the
9 factors under Revised Code 2929.14, and makes the following
10 findings: The shortest prison term would demean the
11 seriousness of the Defendant's conduct; the longest prison
12 term is appropriate because the Defendant committed the worst
13 form of the offense; multiple prison terms are necessary to
14 protect the public from future crime and to punish the
15 offender; consecutive prison sentences are not
16 disproportionate to the seriousness of the Defendant's conduct
17 and to the danger the offender poses to the public; and the
18 harm caused by multiple offenses was so great that no single
19 prison term for any of the offenses committed as part of a
20 single course of conduct adequately reflects the seriousness
21 of the Defendant's conduct.

22 It is therefore ORDERED, ADJUDGED and
23 DECREED that the Defendant, Donna Marie Roberts, shall be

1 sentenced to death on Count One; shall serve an imprisonment
2 term of ten years on Count Three, plus a mandatory term of
3 three years on the Firearm Specification to be served prior to
4 and consecutive to the sentence imposed in Count Three. Shall
5 serve an imprisonment term of ten years on Count Four, plus a
6 mandatory term of three years on the Firearm Specification to
7 be served prior to and consecutive to the sentence imposed in
8 Count Four. Sentence in Count Four is to be served
9 consecutively to the sentence imposed on Count Three. The
10 Firearm Specifications in Counts Three and Four shall merge as
11 one sentence in Count Three as a matter of law. The Defendant
12 shall submit to DNA testing. Costs have been waived by
13 previous ruling of the Court.

14 The Court has previously notified the
15 Defendant of her post-release control notification. The Court
16 disapproves of any placement in any programs provided by the
17 Ohio Department of Corrections.

18 Miss Roberts, you have an absolute right to
19 appeal in this matter. I assume, counsel, you would be
20 willing to take an appointment for the appeal?

21 MR. DOUGHTEN: That is correct, Your Honor.

22 THE COURT: If you could get the
23 appropriate paper filed with the Court, I'll approve the

1 appointment of both of you to handle the appeal in this
2 matter.

3 MR. DOUGHTEN: Thank you, Your Honor. This
4 may be paranoia on our part, previously in the prior agreement
5 we had proffered a number of materials that the Supreme Court
6 did refer to, paragraphs 18 through 21. We just want to make
7 sure we request that those proffered materials remain
8 proffered. I think it's already part of the record but I'm
9 not sure, because this is an unusual proceeding, whether we
10 need to again state for the record we intend to --

11 THE COURT: Certainly noted for the record.
12 And also note that the Court reviewed them in making this
13 decision.

14 MR. DOUGHTEN: Thank you very much.

15 THE COURT: Anything further?

16 MS. ANNOS: Could we approach for just one
17 moment, Your Honor?

18 THE COURT: Sure.

19 (Whereupon, a discussion was held off the
20 record.)

21 THE COURT: Counsel for the State has
22 pointed out, I believe in my Findings of Fact I made reference
23 to a previous original allocution which was an unsworn

1 statement on *Roberts I*, came back on *Roberts II*. It was an
2 actual allocution, so to clarify that for the record.

3 MR. DOUGHTEN: No objection, if that's
4 accurate.

5 THE COURT: Anything further?

6 MR. DOUGHTEN: No. Thank you very much.

7 MR. BECKER: Thank you, Your Honor.

8 THE COURT: Court will be in recess.

9 * * *

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REPORTER'S CERTIFICATE

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14 This is to certify the foregoing represents a true and
15 correct transcript of the proceedings had in the
16 aforementioned cause as reflected by the stenotype notes taken
17 by me on the same.

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Richelle J. Guerrieri
Official Court Reporter

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